By Mr. HULL: A bill (H. R. 18183) granting an increase of pension to John R. McReynolds; to the Committee on Invalid Pensions.

Also, a bill (H. R. 18184) for the relief of the estate of Erastus S. Smith; to the Committee on War Claims.

By Mr. JONES: A bill (H. R. 18185) for the relief of David R. Mister; to the Committee on War Claims.

Also, a bill (H. R. 18186) for the relief of the trustees of Carmel Baptist Church, Caroline County, Va.; to the Committee on War Claims.

Also, a bill (H. R. 18187) for the relief of the trustees of Urbanna Episcopal Church, Middlesex County, Va.; to the Committee on War Claims.

By Mr. OLDFIELD: A bill (H. R. 18188) granting an increase of pension to Joseph L. Hall; to the Committee on Invalid Pensions.

By Mr. TEN EYCK: A bill (H. R. 18189) granting a pension to Morgan A. Harris; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clark's desk and referred as follows:

By Mr. BELL of California: Petition of 850 citizens of Los Angeles, Cal., protesting against national prohibition; to the Committee on Rules.

Also, petition of 1,000 citizens of the ninth congressional district of California, favoring national prohibition; to the Committee on Rules.

By Mr. CONNELLY of Kansas: Petition for the passage of the Sheppard-Hobson amendment to the Constitution for national prohibition, 180 names, Colby; 150 names, Bunker Hill; 21 names, Seldon, all in the State of Kansas; to the Committee on Rules.

By Mr. DILLON: Petition of sundry voters of Union County, S. Dak., protesting against national prohibition; to the Committee on Rules.

By Mr. DIXON: Petition of 50 Civil War veterans of Bartholomew County, 71 citizens of Providence, 150 of Mount Auburn, and 150 of Glade, all in the State of Indiana, favoring national prohibition; to the Committee on Rules.

Also, petition of Miss Vida Newson, Mrs. H. E. Arthur, and others, of Columbus Branch of Woman's Franchise League of Indiana, favoring woman-suffrage legislation; to the Committee on the Judiciary.

By Mr. DONOHOE: Petitions of sundry citizens of Philadelphia, Pa., protesting against national prohibition; to the Committee on Rules.

By Mr. DUNN: Petitions of Frank W. McHugh Co. and Teutonia Liedertafel Society, both of Rochester, N. Y., and Central Federation of Labor, of Cohoes, N. Y., protesting against nation prohibition; to the Committee on Rules.

Also, memorial of Women's Missionary Society, Third Presbyterian Church of Rochester, N. Y., relative to amendment prohibiting polygamy in the United States; to the Committee on the Judiciary.

By Mr. FRENCH: Petition of citizens of Cœur d'Alene, Idaho, protesting against national prohibition; to the Committee on Rules.

By Mr. GUERNSEY: Petitions of citizens of Dover, Foxcroft, and Bangor, Me., favoring national prohibition; to the Committee on Rules.

By Mr. HAWLEY: Petitions of G. A. Seavey and others of Springfield, Oreg., protesting against national prohibition; to the Committee on Rules.

By Mr. MERRITT: Petition of Frederick R. Griffiths, Samuel Orr, Frank Backus, W. F. Chaffee, G. W. Muir, Floyd Patterson, T. N. Madill, Noah Walker, Charles E. Wheater, J. B. Wheater, L. B. Ginn, Robert Merrifield, O. L. Dickinson, James Weatherup, Newton Stone, Joseph Ross, R. R. Ormsbee, William Graham, L. W. Seaman, L. N. Stone, C. E. Sunderland, J. L. Wood, T. Hutchinson, John McAllister, James Dame, Henry Parkhill, E. M. Bagley, John Cline, W. A. Burlingame, E. H. Dexter, G. H Simpson, C. B. Doty, R. S. Murray, Richard Kelly, Fred N. Bockus, E. M. Spry, F. W. Laidlaw, E. D. Hanson, Allen Bill, S. R. McCrea, and V. L. Lyttle, all of Rensselaer Falls, N. Y., favoring national prohibition; to the Committee on Rules.

By Mr. J. I. NOLAN: Resolutions of the International Union of Journeymen Horseshoers of America, protesting against the passage of the Hobson nation-wide prohibition resolution; to the Committee on Rules.

By Mr. SELLS: Memorial of the Woman's Home Missionary Society, First Methodist Episcopal Church, Johnson City, Tenn., protesting against the practice of polygamy in the United States; to the Committee on the Judiciary.

By Mr. STEPHENS of California: Petitions of sundry citizens of Wilmington and San Pedro, Cal., favoring national prohibition; to the Committee on Rules.

By Mr THACHER: Memorial of Quarterly Conference of Methodist Episcopal Church, Marstone Mills, and Quarterly Conference of Methodist Episcopal Church, Osterville, Mass., favoring national prohibition; to the Committee on Rules.

By Mr. WILSON of New York: Memorial of citizens of New York City, favoring Government ownership of the coal mines in Colorado; to the Committee on the Judiciary.

SENATE.

SATURDAY, *August 1, 1914.*

(Legislative day of Monday, July 27, 1914.)

The Senate reassembled at 11 o'clock a. m. on the expiration of the recess.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the following bills:

S. 663. An act for the relief of Thomas G. Running;

S. 1149. An act for the relief of Seth Watson;

S. 1803. An act for the relief of Benjamin E. Jones;

S. 3761. An act for the relief of Matthew Logan;

S. 4023. An act for the relief of Waldo H. Coffman;

S. 6084. An act to grant the consent of Congress for the county of Pulaski, State of Arkansas, to construct a bridge across the Arkansas River between the cities of Little Rock and Argenta, Ark.; and

S. 6101. An act to grant the consent of Congress for the city of Lawrence, county of Essex, State of Massachusetts, to construct a bridge across the Merrimac River.

The message also announced that the House had passed the bill (S. 23) for the relief of Clara Dougherty, Ernest Kubel, and Josephine Taylor, owners of lot No. 13; of Ernest Kubel, owner of lot No. 41; and of Mary Meder, owner of the south 17.10 feet front by the full depth thereof of lot No. 14, all of said property in square No. 724, in Washington, D. C., with regard to assessment and payment for damages on account of change of grade due to the construction of Union Station, in said District, with amendments, in which it requested the concurrence of the Senate.

The message further announced that the House further insists upon its amendments to the bill (S. 4628) extending the period of payment under reclamation projects, and for other purposes, disagreed to by the Senate, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. TAYLOR of Colorado, Mr. BAKER, and Mr. KINKAID of Nebraska managers at the conference on the part of the House.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 858. An act for the relief of Thomas E. Philips;

H. R. 2312. An act for the relief of Rathbun, Beachy & Co.;

H. R. 2642. An act authorizing the President to reinstate Joseph Eliot Austin as an ensign in the United States Navy;

H. R. 6201. An act to authorize the Secretary of the Interior to issue a deed to the persons hereinafter named for part of a lot in the District of Columbia;

H. R. 6530. An act for the relief of Michael F. O'Hare;

H. R. 7287. An act for the relief of Edward A. Thompson;

H. R. 11394. An act for the relief of Joseph A. Powers;

H. R. 11765. An act to perfect the title to land belonging to the M. Forster Real Estate Co., of St. Louis, Mo.;

H. R. 12198. An act for the relief of Benjamin A. Sanders;

H. R. 13350. An act for the relief of the widow and heirs at law of Patrick J. Fitzgerald, deceased;

H. R. 13352. An act to allow credit in the accounts of Wyllys A. Hedges, special disbursing agent;

H. R. 13591. An act for the relief of John P. Ehrmann;

H. R. 13723. An act for the relief of Richard Riggles;

H. R. 14711. An act for the relief of Miles A. Hughes;

H. R. 14956. An act to reimburse the postmaster at Kegg, Pa., for money and stamps taken by burglars;

H. R. 16305. An act to reimburse Henry Weaver, postmaster at Delmar, Ala., for money and stamps stolen from said post office at Delmar and repaid by him to the Post Office Department;

H. R. 16370. An act for the relief of the Richmond, Fredericksburg & Potomac and Richmond & Petersburg Railroad Connection Co.;

H. R. 16755. An act authorizing and directing the Secretary of the Interior to execute and deliver a deed in favor of and to Ida Seymour Tulloch, Roberta Worms, and Ethel White Kimpell for sublot 38 of original lot 17 in reservation D, upon the official plan of the city of Washington, in the District of Columbia;

H. R. 17074. An act for the relief of the Paterson & Hudson River Railroad Co.;

H. R. 17085. An act for the relief of the Montgomery & Erie Railway Co.;

H. R. 17086. An act for the relief of the Goshen & Deckertown Railway Co.;

H. R. 17102. An act for the relief of the Columbus, Delaware & Marion Railway Co., of Columbus, Ohio;

H. R. 17110. An act to reimburse Epps Danley for property lost by him while light keeper at East Pascagoula River (Miss.) Light Station;

H. R. 17424. An act for the relief of Hunton Allen; and

H. R. 17464. An act for the relief of Fred Graff.

FEDERAL TRADE COMMISSION.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15613) to create an interstate trade commission, to define its power and duties, and for other purposes.

Mr. HUGHES. Mr. President, I make the point of no quorum.

The PRESIDENT pro tempore. The Senator from New Jersey suggests the absence of a quorum. Let the Secretary call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Gallinger	Nelson	Smith, Ariz.
Brady	Gronna	Newlands	Smith, Ga.
Brandegee	Hitchcock	Norris	Smoot
Bristow	Hollis	Overman	Stone
Bryan	Hughes	Page	Sutherland
Burton	Jones	Perkins	Thompson
Chamberlain	Kenyon	Pittman	Thornton
Chilton	Kern	Pomerene	Vardaman
Clapp	Lane	Reed	West
Clarke, Ark.	Lea, Tenn.	Saulsbury	White
Colt	Lee, Md.	Sheppard	Williams
Crawford	Martine, N. J.	Shively	
Cummins	Myers	Simmons	

Mr. THORNTON. I was requested to announce the unavoidable absence of the junior Senator from New York [Mr. O'GORMAN]. I ask that this announcement may stand for the day.

Mr. JONES. I desire to announce that the junior Senator from Michigan [Mr. TOWNSEND] is necessarily absent from the city. He is paired with the junior Senator from Arkansas [Mr. ROBINSON]. This announcement I will let stand for the day.

Mr. KENYON. I desire to announce the unavoidable absence of the senior Senator from Wisconsin [Mr. LA FOLLETTE] on account of illness.

Mr. PAGE. I wish to announce the unavoidable absence of my colleague [Mr. DILLINGHAM]. He is paired with the senior Senator from Maryland [Mr. SMITH].

Mr. WHITE. I desire to announce that my colleague [Mr. BANKHEAD] is necessarily absent and is paired. This announcement may stand for the day.

Mr. GALLINGER. I desire to announce that the junior Senator from Maine [Mr. BURLEIGH] is unavoidably absent. He is paired with the junior Senator from New Hampshire [Mr. HOLLIS].

The PRESIDING OFFICER (Mr. HITCHCOCK in the chair). Fifty-one Senators have answered to their names. A quorum of the Senate is present. The pending question is the amendment of the Senator from Iowa [Mr. CUMMINS] to the amendment, on which the yeas and nays have been ordered. The Senator from Arkansas [Mr. CLARKE] is entitled to the floor.

[Mr. CLARKE of Arkansas addressed the Senate. See Appendix.]

Mr. REED. Mr. President, there has been so much discussion about the term "unfair competition," what it means and what it does not mean, that I have undertaken to prepare a suggestion in the nature of an amendment to be inserted preceding the text of section 5. I am not offering it as the perfection of definition, but as a suggestion which I hope may meet with favor.

I want to say that the Senator from West Virginia [Mr. CHILTON] worked out some definitions some time ago which he has at various times kindly handed to me, and in part this definition is, I think, adopted from the suggestions he has made. However, I have no notion as to whether this definition will suit him or not. I desire to read it and then send it to the desk in order that it may at the proper time be taken up.

I should like to have the attention of the chairman of the committee, because he has challenged me several times to define "unfair competition," and out of pure love of the chairman, more than anything else, I have undertaken it.

The term "unfair competition" is hereby defined to embrace all those acts, devices, concealments, threats, coercions, deceits, frauds, dishonest practices, false representations, slanders of business, and all other acts or devices done or used with the intent or calculated to destroy or unreasonably hinder the business of another or prevent another from engaging in business, or to restrain trade or to create a monopoly.

Mr. President, I do not at this time care to discuss it. I wish to make a correction in it.

Mr. WALSH. I wish to suggest to the Senator from Missouri that he left out "espionage," which is a rather offensive form of unfair competition.

Mr. REED. I think that would come under the head of dishonest practices.

Mr. CHILTON. Of fraud.

Mr. REED. It might come under the head of fraud. I have not endeavored to classify every possible thing, but I have put enough of those practices in there so as to characterize the term and what the term is aiming at. I do not claim that it ought not to be amended; I do not claim that somebody can not produce a better one; but I do claim that it is infinitely better than nothing.

The PRESIDING OFFICER. The Senator's amendment is in order at the present time as an amendment to the substitute offered by the Senator from Iowa.

Mr. CUMMINS. I do not think it is.

Mr. NEWLANDS. I will ask the Senator whether in his judgment his amendment or his definition would cover any other unfair practices than those enumerated?

Mr. REED. Oh, yes; because the term is universally stated, "and all other"——

Mr. NEWLANDS. I hope the Senator will have his amendment printed immediately.

Mr. REED. "And all other acts or devices" is the language, and here is where you get a chance for a court to have a rule of construction:

And all other acts or devices done or used with intent or calculated to destroy or unreasonably hinder the business of another or prevent another from engaging in business, or to restrain trade or to create a monopoly.

I will say to the Senator from Montana, if he desires to put additional words in here I have no objection.

Mr. WALSH. I merely made the suggestion to indicate to the Senator how difficult it is to make a definition that will cover all cases.

Mr. SMOOT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Utah will state his inquiry.

Mr. SMOOT. Has the Senate accepted the substitute of the Senator from Ohio? Has it been acted upon?

The PRESIDING OFFICER. The committee has accepted it and withdrawn the original committee amendment.

Mr. SMOOT. But it has not yet been acted upon by the Senate?

The PRESIDING OFFICER. It has not.

Mr. CUMMINS. I do not understand that the Senator from Missouri offered that amendment at this time. I have no disposition to preclude the fullest inquiry with regard to the subject of his amendment, but the issue between the amendment offered by the Senator from Ohio and afterwards adopted by the committee and my amendment relates to another matter. It seems to me that it would be better to have the issue determined. Then, another matter, whether my amendment prevails or that of the Senator from Ohio, it can be amended in the respect found in the proposal of the Senator from Missouri.

Mr. REED. Mr. President, it had not been my purpose to ask that this amendment be at this time voted upon. Indeed, I would very greatly prefer if it could lie over and be printed and have the full consideration and inspection of the Senate. I have no pride of authorship in it.

Mr. NEWLANDS. I suggest to the Senator that the amendment be printed immediately.

Mr. CUMMINS. The Senator from Missouri wants his amendment made no matter whether my amendment is adopted or whether the amendment of the Senator from Ohio stands.

Mr. REED. Certainly. As I understand the parliamentary situation, we can vote on the amendment offered by the Senator from Iowa, and if that is accepted this amendment could then be properly offered, and if that amendment which is offered by the Senator from Iowa is defeated the amendment of the Sen-

ator of Ohio would then be before the Senate, and this amendment would be fully admissible at that time. So I do not care now to have it voted upon. I will ask that it be immediately printed.

The PRESIDING OFFICER. The Senator is correct in part but incorrect in part. Should the amendment of the Senator from Iowa be adopted it will not be subject to further amendment until the bill gets into the Senate. But the Chair was in error in stating that the amendment of the Senator from Missouri is in order. The Chair now thinks it is not in order, because the yeas and nays have already been ordered on the amendment of the Senator from Iowa.

Mr. McCUMBER. Mr. President, I wish to direct my remarks to the Senator from Missouri. I agree with the Senator that there ought to be some definition of the words "unfair competition." I further agree that the definition ought to be such as will exclude all the ordinary efforts of competition except those which are directed to the destruction of competition in some way and at some particular point. But here is the danger that I see in the draft that has been made by the Senator from Missouri: By including a number of specified things that come within the definition it is easy to construe that other things which are left out are not within it.

Now, I am going to suggest a definition which I have drawn and which at least seems to me to be more apt in a general law. I want the attention of the Senator from Missouri to this language:

> The words "unfair competition" as used herein shall be construed to mean any acts or practices in trade or commerce which are intended or the natural consequences or results of which are to stifle or destroy competition at any point.

That is general, and yet it goes directly to the point that the competition must be such as is intended or the natural result of which will be to destroy or cripple competition at any particular point. Any of these acts or practices in commerce or trade are broad enough in a definition of that kind to include any possible practice the effect or result of which would be to stifle or destroy competition.

It seems to me, Mr. President, that it would be better that we should not attempt to include certain defined practices, but leave all practices which have a general result or effect to come clearly within the definition.

Mr. REED. Mr. President——

Mr. BRANDEGEE. With the permission of the Senator from Missouri, would not the adoption of the definition as indicated by the Senator from North Dakota make successful competition unlawful?

Mr. McCUMBER. Oh, no.

Mr. BRANDEGEE. The mere success of the competition would be included in the Senator's definition, it seems to me, if in effect it destroyed competition, if it was a perfectly legitimate competition and was successful, where one man got the business the effect of which had been to destroy competition. Do we want to declare successful competition to be unlawful if it is fair?

Mr. McCUMBER. No, Mr. President; I do not think that criticism should be directed more to this definition than to the one which has been read.

Mr. BRANDEGEE. Will the Senator read his definition again, then, and see?

Mr. McCUMBER. The whole idea is that the competition must be unfair, it must be unjust, and it must be for the purpose of destroying competition.

Mr. BRANDEGEE. But the Senator is trying to give a definition of what unfair competition is, and, if I understand it, his definition of "unfair" is if the effect of the competition is to destroy competition.

Mr. McCUMBER. On the contrary, I am trying not to extend or expand the meaning but to limit it to those cases only in which the purpose or the natural and logical result of it is to destroy competition.

Mr. BRANDEGEE. Will the Senator kindly have his definition repeated?

Mr. CUMMINS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa will state it.

Mr. CUMMINS. The amendment that has been suggested by the Senator from Missouri is not before the Senate, save to be printed and thereafter considered. The question is on the amendment that I have offered as a substitute for that of the Senator from Ohio. Is this debate upon the proposed amendment of the Senator from Missouri in order?

The PRESIDING OFFICER. The Chair would hardly rule on a question of that character, but the Chair is clear that it would be more appropriate to discuss this amendment later, after the vote is had.

Mr. McCUMBER. Mr. President, the whole question is on the amendment of the Senator from Iowa [Mr. CUMMINS]. Of course, that is open to discussion until the roll call has commenced. One of the phrases which is used in the amendment of the Senator from Iowa is "unfair competition." It may be, as has already been indicated by the Chair, that some of us would prefer to have that term defined before voting on the amendment of the Senator from Iowa; in other words, we would like to have some kind of a definition to indicate what the courts are to consider "unfair competition" to mean. It does not make any difference whether that definition is made in the amendment of the Senator from Iowa or in any other amendment that may be agreed upon, whether in the substitute or in the original. There ought to be some kind of a definition of "unfair competition," so that the average business man may know what it means.

Mr. NEWLANDS. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Nevada?

Mr. McCUMBER. I yield.

Mr. NEWLANDS. If the Senator will permit me to make a suggestion, I will say that I find a very general sentiment expressed regarding an immediate vote upon the amendment offered by the Senator from Iowa, which relates, of course, to the question of court review. The question of the definition itself will come up later on. I suggest to the Senator from North Dakota, in the interest of expedition, that the roll call has been ordered.

Mr. McCUMBER. Let me ask the Senator a question. Suppose the amendment of the Senator from Iowa should carry, could his amendment then be amended, after it had been adopted, before the bill is reported to the Senate? I think not.

Mr. NEWLANDS. I understand not.

Mr. McCUMBER. I think the proper place to perfect an amendment that is to be voted upon is before that amendment is disposed of as in Committee of the Whole.

Mr. NEWLANDS. The Senator is correct in that view. If the amendment is sought to be pressed before the bill gets into the Senate, it will have to be urged now.

Mr. McCUMBER. But I will say that if the Senator is desirous of taking a vote at the present time, really, in the end, there will be very little difference whether the other proposition is voted on now or voted on in the Senate. I shall not urge the amendment at this time, if that will facilitate a vote.

Mr. NEWLANDS. I am greatly obliged to the Senator.

Mr. REED. Mr. President, the Senator from North Dakota asked me a question some time ago, and I have been trying to answer it. The Senator's question is a very proper one, which naturally occurs to a lawyer—whether by specifying certain acts we do not exclude others; whether if we undertake to include others by a general clause, the rule of ejusdem generis does not apply? It is true that if you specify certain acts, and stop with that, others are held to be excluded, but where you add a general term the rule or doctrine of ejusdem generis does not apply if you make it plain that it is not intended that it should apply. The Senator has not the amendment before him, but when it is printed I think he will find on examination that both of those difficulties have been avoided, because after these various acts have been specified follows a general phrase:

> And all other acts or devices done or used.

Now, we get the intent and we get the definition of those other acts and devices in these words:

> Done or used with the intent or calculated to destroy or unreasonably hinder the business of another or prevent another from engaging in business or to restrain trade or to create a monopoly.

I say to the Senator that I had both of those qualifications in my mind, and I sought to draw this amendment so that it will avoid both of them. It is very broad in its terms, and yet it is not so broad that there is not a guide set up by which the business man and the lawyer advising the business man has the path marked out. It is intended to prohibit everything in the nature of concealment—that is, secret, underhanded methods, threats and coercion, which is a weapon often employed, deceits, frauds, dishonest practices, false representations, and slanders of business. Those terms will cover, I undertake to say, every practice that has ever been indulged in, if you stop there; but I do not stop there. I have included in the amendment general language, so that any man reading it can tell the character of acts that are prohibited, and any commission enforcing the law can tell the general character of acts, as can any court. While I do not claim that the amendment is neces-

sarily perfect, I trust the Senator from North Dakota will carefully examine it when it is printed.

The PRESIDENT pro tempore. The Chair will make an announcement at this point. The Senator from Nebraska [Mr. HITCHCOCK], who has been occupying the chair, has ruled that an amendment to the so-called Cummins amendment was not in order at this time, because the yeas and nays had been asked for on its adoption. The Secretary now advises the Chair that there has been no such order of record, either in the RECORD or in the Journal.

Mr. CUMMINS. Will the Chair kindly repeat his statement. I was engaged for a moment.

The PRESIDENT pro tempore. The Chair made an announcement to correct a misapprehension under which the Senator from Nebraska, while occupying the chair, labored. A Senator offered an amendment to the amendment, and the Senator then occupying the chair decided it was not in order, because the yeas and nays had been ordered on the adoption of the so-called Cummins amendment. The Secretary now advises the Chair that there is no such order of record.

Mr. CUMMINS. That accords with my recollection, Mr. President.

Mr. PITTMAN. Mr. President, I should like to ask the Senator from Iowa if his amendment provides for any form of appeal by one making complaint to the trade commission, in the event that the trade commission does not grant the remedy to which the complainant believes he is entitled?

Mr. CUMMINS. It does not. As I said yesterday, that involves opening up everything for a trial de novo. It is impossible to avoid that, if one who is denied relief is given the right to appeal; but I may say that this is not an adversary proceeding. The complaint is initiated by the commission and not by a third person.

Mr. PITTMAN. Is there any provision for a complaint being made by a third person?

Mr. CUMMINS. Oh, certainly; anyone has a right to file a complaint with the commission, and if the commission has reason to believe that this section of the law is being violated, it then serves notice of the complaint upon the person or corporation violating it and calls him or it before the commission.

Mr. PITTMAN. What would be the remedy of the complainant—that is, the individual or corporation suffering from oppressive acts complained of—if it should transpire that the trade commission had tendencies in favor of the oppressive corporation?

Mr. CUMMINS. Such a person would sue the offending corporation or association to recover damages.

Mr. PITTMAN. But he would have no remedy through the proposed commission?

Mr. CUMMINS. I think not; I hope not. This is a proceeding, as I said yesterday, for the benefit of the people of the country. It is intended to prevent unfair competition. Its enforcement is precisely like that of a criminal statute; society enforces the statute; society, through the commission or through the Government, enforces the law, leaving each individual to the recovery of his damages according to the law, but not through the commission, which is a representative of the Government. That is the theory of the interstate-commerce law, and that is the theory of this proposed law.

The PRESIDENT pro tempore. The question is on the adoption of the substitute offered by the Senator from Iowa.

Mr. CUMMINS. I ask for the yeas and nays.

Mr. POMERENE. Mr. President, just a moment, before the question is submitted. The Senator from Arkansas [Mr. CLARKE] expressed his views this morning very forcefully and very learnedly, as he always does when he discusses a legal proposition, and I want to submit to the Senate just a few words in reply. I am not going to take the time to discuss the measure in full, because that has been done heretofore.

The Senator from Arkansas and others seem to be content with the practice under the interstate-commerce act and to feel that the practice under the proposed act should be patterned after it. I accept that theory in part, but not in full. It does seem to me that there is a very radical difference between the classes of questions which will come before the two commissions. In the case of the Interstate Commerce Commission, on one side of the controversy there is always a common carrier and on the other side a shipper.

I recognize the fact that for many years there has been great resentment against the common carriers because of the discrimination practiced by carriers as between shippers and because of the exorbitant rates charged in many localities; but the situation, so far as it applies to the pending bill, is entirely different, in my judgment. Except for the amendment which has just been proposed by the Senator from Missouri [Mr. REED], there has been no attempt to define what "unfair competition" means, and, with all due respect to his effort, I do not believe that we could satisfactorily define that term now if we were to attempt to do so. Then, we are compelled to place one of two constructions upon this phrase—either the one for which I contend or the one which is broader and more comprehensive and embraces every sort of practice that may now be in vogue or which may hereafter be conceived in the commerce of the country.

We can not think of business without thinking of competition. If two corporations are engaged in selling articles of the same kind, there is necessarily competition of some kind. There are between 300,000 and 400,000 corporations in this country, and there are 100,000,000 people all engaged more or less actively in some kind of business. Under the amendment which is proposed by the committee, of course, we limit the application of the provisions of this bill to corporations, while under the amendment proposed by the Senator from Iowa there is no limit; it applies to individuals and partnerships as well as to corporations.

Now, what is the situation? We are proposing to refer to a commission of five men every question which is involved in the multifarious practices of a hundred million people for those five men to determine, in their judgment, what is fair competition and what is unfair competition. I submit that to give all of this power over all the business of this vast country to the keeping of five men, a part of whom may be learned in the law and a part of whom may not be, dependent upon the wisdom of the President as his wisdom may be approved by the Senate of the United States, and to say that the Congress is going to surrender its legislative power and the courts are to surrender their judicial power in large part to this body of five men without an opportunity for a full review on the record below is to me incomprehensible.

Senators who have been favoring this bill on the floor of the Senate have time and time again spoken against the encroachments by the executive power upon the legislative power of Congress, and now, by one single act, they are seeking to transfer all the legislative power and much of the judicial power to this single commission of five men. With all due respect to their judgment—and I have a profound respect for the judgment of those Senators who differ from me upon this subject—I feel that we have not arrived at that time in the history of this problem when we should be willing to clothe this commission with almost superhuman power. It is proposed to give to this commission a power which is greater in its consequences than that which now devolves upon the Supreme Court of the United States.

On the other hand, the Senator from Arkansas is no more zealous than I am in the desire to expedite litigation. The law's delay has been a menace, not only to the profession of the law but to all branches of business. I agree with him that when we do anything toward limiting the law's delay we are doing a service to our country; but I can not get away from the fact that this commission should be subject to a full and a complete review by the courts of the land.

Mr. CLARKE of Arkansas. Mr. President, does the Senator understand that "the courts of the land," to which he refers, consist in the first instance of one district judge?

Mr. POMERENE. Oh, no; not at all.

Mr. CLARKE of Arkansas. And, upon appeal to the court of appeals, of three judges? It leaves it at least to four persons instead of five; primarily to one, because the cast which is given to a case by the nisi prius judge is in very rare instances changed. It is only his obvious errors in assuming certain things to be true. You would appeal, in other words, from five to one.

Mr. POMERENE. That is very true; but the Senator from Arkansas would leave to this tribunal the right to pass upon the facts, and substantially declare that certain practices are or they are not a violation of what they may conceive the law to be, without giving to the commission any guide whatsoever, and without giving to the courts above the full power of review, which, I think, they should have upon the record below.

I believe that the amendment which I have proposed can be modified so as to meet to some extent the views of the Senator from Arkansas; and since the Senate convened this morning——

Mr. CLARKE of Arkansas. Permit me to say that I have not any views about it. My views are entirely borrowed from the beaten path laid down by the Congress of the United States, and confirmed and clarified by the decisions of the Supreme Court of the United States. I simply accept an opinion that has been handed over to me by tribunals that I am bound to respect.

Mr. POMERENE. That is all very true; and if we were to follow the Senator's logic to its final conclusion, we would say, as to all questions which may be the subject of litigation, "We shall refer them to a commission of five men and allow them to pass upon and determine the merits of the case."

To meet in part the views of some of the Senators, after conferring with members of the committee, I am going to ask the permission of the Senate to modify the amendment which I offered the other day by striking out, on page 3, the following language, beginning on line 7 and ending on line 18:

Upon such final hearing the findings of the commission shall be prima facie evidence of the facts therein stated, but if either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is competent and material, and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may allow such additional evidence to be taken before the commission or before a master appointed by the court, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem just.

And by inserting in lieu thereof, before the period on line 7, the following:

On the record of the testimony so returned.

So that the hearing in the district court will be upon the record as it comes to that court from the commission.

I ask permission to modify the pending amendment in that behalf.

The PRESIDING OFFICER (Mr. LEE of Maryland in the chair). Is there any objection? The Chair hears none.

Mr. STONE. Where does that amendment come in? Where is it inserted?

Mr. POMERENE. On page 3, beginning on line 7. I propose to strike out all of the bill beginning with the words "Upon such final hearing" and going down to the word "just" in line 13.

Mr. CULBERSON. Beginning in line 8.

Mr. KERN. Line 9.

Mr. POMERENE. No; line 7. I think perhaps the Senators may have a different print.

Mr. KERN. The Senator proposes to strike out those words?

Mr. POMERENE. To strike out the sentence beginning with the words "Upon such final hearing," on line 7, and ending on line 18 with the words "conditions as to the court may seem just."

Mr. KERN. That is stricken out?

Mr. POMERENE. That is stricken out; and then there is inserted, on line 7 before the period and after the word "hearing," the words "on the record of the testimony so returned."

Mr. CUMMINS. Mr. President, I shall not prolong the debate on the amendment. I rise simply to say that the change just suggested by the Senator from Ohio makes his amendment worse rather than better, and it does not in any degree change the essential issue between the plan which he has proposed and the plan which I have proposed.

I again ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. BRANDEGEE. Mr. President, I have listened with great interest to what the Senator from Ohio has said. I agree, if I understand what he has said, with his criticism upon the powers conferred upon the commission in this bill. I do not, however, understand how he, entertaining the views which he has expressed so eloquently and so incisively and so clearly as to the undesirability and unlawfulness of the attempt to confer upon this commission the jurisdiction contained in section 5 of the bill, can think that the criticism he has made is at all alleviated by the amendment which he proposes.

If section 5 does confer or attempt to confer judicial power upon this commission, it is absolutely void. If it attempts to confer legislative power without laying down the standard or primary rule within which the power conferred may be exercised in the discretion of the commission, it is absolutely void. The Senator from Ohio apparently thinks it attempts to confer both judicial and legislative power upon the commission. The Senator from Tennessee [Mr. SHIELDS] yesterday, in a lawyerlike and statesmanlike exposition of section 5, argued that it confers judicial, legislative, and executive power upon the commission, and authorizes the commission to bring suits in the courts of the United States in addition to the exercise of legislative and judicial power. I agree with him. How any lawyer who wants to preserve separately the three departments into which the powers of the Government of the United States are divided by the Constitution can consent to see them scrambled together in section 5, as they are in this bill, and criticize the scrambling process, and then vote for it on the ground that there can be a review of an order of the commission by a court, I fail to comprehend.

Mr. President, I think section 5 should be stricken from the bill. I do not think it is any answer to that to say that the bill would be emasculated if that were done. That is the fault of the bill. If the bill has an unconstitutional section in it, and if there is no cause for the creation of such a great and expensive commission except that it may be allowed to exercise powers which are unconstitutional, then there is no cause for the creation of that expensive and meddlesome commission. Of course, if the commission is to exercise or attempt to exercise the powers attempted to be conferred upon it by section 5, it is better, in my opinion, that there should be some sort of a court review, although I think there will be a way of testing the constitutionality of the act without the review provided by either of the pending amendments.

I think the first time the bill encounters the Supreme Court of the United States, as it will, it will be declared to be void in section 5. Then, in my opinion, the chief reason for the existence of the bill, in the opinion of its friends, will have been removed, and it will have no reason for its existence except as a wasteful, extravagant, meddlesome, undemocratic, un-American concern in this country. It is suggested that according to some Senators the balance of the bill will go with the body; and if section 5 is the body, the sooner the balance does go with it the better, in my opinion.

Mr. President, at first I was inclined to vote for the so-called Cummins amendment, the pending amendment, because at least that is consistent with itself. Instead of saying, as section 5 of the pending bill does, that unfair competition is the thing that is declared unlawful, and then, as section 5 of the bill does, proceeding to empower the commission to prohibit only unfair *methods* of competition, which in my opinion may be an entirely different thing, I prefer the Cummins amendment in that respect, because the Cummins amendment authorizes the commission to prohibit what the bill declares to be unlawful. The pending bill authorizes the commission to prohibit one thing, and declares to be unlawful another, and results in an absurdity, in my opinion, and a jumble; and I think that is dangerous to the bill, if anybody wants to see it preserved.

The Cummins amendment provides that unfair competition is declared unlawful, and the commission is given authority to prevent such unfair competition, which I think is a correct use of language in the sense that it is uniform. The Cummins amendment also authorizes the commission to prohibit what the bill declares to be unlawful by whomsoever the offense is committed. The Pomerene amendment does not. The Cummins amendment provides that whenever the commission shall have reason to believe that any person, partnership, or corporation is violating the provisions of the section it shall issue and serve upon the defendant a complaint. The Pomerene amendment simply provides that when a *corporation* has committed unfair competition it shall have the complaint served upon it. If, however, the Pomerene amendment prevails, and section 5 of the bill is left as it is, the multimillionaires of the country may compete unfairly in commerce to their hearts' content, whereas some small corporation that is competing with another of medium size will have the commission upon its back in no time. If unfair competition is an offense at law, if anybody can ascertain what it is, it ought to be prohibited and punished, no matter by whom committed.

In the multiplicity of the *cul de sacs* into which one wanders while he is trying to steer his way through the intricacies and contradictions of this bill, one is really at times in some difficulty to point out clearly all the troubles that occur to him as he attempts to tread the labyrinth.

Mr. CLARK of Wyoming. Mr. President, will the Senator yield to me for a moment?

Mr. BRANDEGEE. I yield.

Mr. CLARK of Wyoming. Does the Senator understand that under the Pomerene amendment if a corporation is engaged in the same line of business and in active competition with a partnership engaged in a like business and in like competition that would be condemned by the law as to one competitor and would not be condemned by the law as to the other? Suppose they were both pursuing the same practices, and both, as a matter of fact, were unfair, and they were in competition with each other. The unfair competition of the corporation would be under the ban of the law and the equally unfair competition of the partnership would not be.

Mr. BRANDEGEE. That is perfectly true unless the term "partnership" would be included within the definition of what constitutes a corporation in the first part of the bill.

Mr. CUMMINS. It is not contended that a partnership would be within the definition of a corporation.

Mr. BRANDEGEE. I was led to make the observation I did because a few days ago the Senator from Tennessee [Mr.

SHIELDS], in commenting upon the definition contained in the first part of the bill, said that the term "corporation"—the bill providing that it shall include joint-stock associations and all other associations having shares of capital or capital stock organized to carry on business for profit—would, in some of the States, take in partnerships, because in his State and in some other States to which he referred partnerships had shares of capital, whether they issued stock against the interest or the shares or not.

Mr. CLARK of Wyoming. Then I will change my inquiry and make it as to an individual engaged in a like business with a corporation.

Mr. BRANDEGEE. Absolutely so, as to that distinction. Under the Pomerene amendment and under the bill the only unfair competition that is prohibited is that of corporations. As I say, rich men——

Mr. CLARK of Wyoming. Then, to be concise, the bill aims, not at the practice but at the association or corporation which engages in the practice. The bill, then, does not aim per se to stop or punish unfair competition, but only to stop it when it is performed by certain associations or corporations?

Mr. BRANDEGEE. Yes; that is true. The bill aims to punish it when it is committed by corporations, because that is the only case in which the commission is authorized to prohibit it; but the bill in its terms prohibits it without limitation, because section 5 begins by saying:

SEC. 5. That unfair competition in commerce is hereby declared unlawful.

Mr. CLARK of Wyoming. Yes; but the purport of the bill is that unfair competition in commerce refers only to such competition as is carried on by corporations or associations. The same act or series of acts carried on by an individual would not, under the terms of the bill, be unfair competition, and would not come under the ban of the bill.

Mr. BRANDEGEE. I think it would come under the ban of the bill, and if the Senator will allow me I will be very brief in elucidating why I think so. What comes under the purport of the bill is perhaps to be inferred from what the Senator's interpretation of all the provisions of the bill may be. Section 5 is the only section which attempts to prohibit or to stop unfair competition, and it is that section I am discussing. The bill provides in other parts of it about other things, but section 5 sets up a new offense in this country, if the friends of the bill are to be believed, to be known as unfair competition, and it is declared by the bill to be unlawful.

As the Senator from Tennessee [Mr. SHIELDS] said yesterday, the bill does not say whether it is a crime or a misdemeanor or whether it is unlawful, and the only penalty is that it may be prohibited. There appears to be no penalty in the bill for it except an order to desist and stop. If we can have a crime or a misdemeanor in this country with no penalty attached to it, it apparently is not a very serious offense. But yesterday the Senator from Tennessee gave it as his opinion, in his very able speech, that anybody who was injured, the competitor who was injured, or anybody else who was injured by the unlawful competition would have a remedy at law and could sue in damages in a civil action and collect merely by proving that his opponent had committed an offense at law, that he had done something which was unlawful, and the Senator cited the cases which have held that a person injured by a trolley car, for instance, if the company operating the car which had committed the injury were violating a city ordinance, could recover because the company had broken the law. So, in my opinion, neither of these amendments, if adopted, will cure the inherent and constitutionally incurable defects of section 5 if it is permitted to stand.

I shall vote for one or the other of them, because then, at least in the bill on the face of it, it will purport not to make the judgment of this commission absolutely final, and it will give a chance for some court, some legal officer, as distinguished from whoever may constitute the membership of this commission, to state what Congress meant when it declared something to be unlawful. However reactionary or old-fashioned it may be, I must admit that I have within my being something that tells me that it is safer for society and for the rights of individuals who may be oppressed to be allowed in an orderly manner to have a court adjudicate whether they have committed an offense or not, rather than to have an administrative commission appointed by the President do it.

I may be entirely wrong in that feeling. It may be that the decisions as to violations of statutes in this country ought to be taken away from the courts and that a commission should be established here, whose judgment should be final, to decide whether men have or have not violated the law of this country; but that theory is utterly antagonistic to everything that I have been taught, and to everything that I believe, and to everything that I thought our fathers had fought for when they obtained the liberties that we supposed had been guaranteed by the Constitution of the United States.

I think everyone would feel safer with the orderly process and judgment of a court. If these words mean anything or can be judicially decided to mean anything, then it would be left to the arbitrary notion of three out of five of some commissioners who have not yet been appointed and who, the friends of the bill say, are to be appointed, not because they are lawyers but because they may be skilled in the practice of business, experts in business methods. Whatever may be the value of having expert advice or expert opinion upon a matter, I do not think a mere expert in business is per se and on that account a better judge of the interpretation of the statutes that Congress may pass than the duly constituted judiciary of the country.

As I said, I suppose that is utterly out of touch with modern thought; but if it is, so be it. I do not believe in this sort of government. I do not care what the consequences are or what the penalties are for my disbelief, or whether it is schismatic or what not, I in my conscience am satisfied that my view is right. I am satisfied of it when the attempt is made to have commissions in this country interpret what the law phrases of Congress mean, and who have committed offenses that Senators stand here from day to day and admit their utter inability to define. It is a process which the able Senator from Tennessee, who has been the chief justice of the supreme court of that great State, says is equivalent to making a retroactive statute, a process which, to my mind, is equivalent to the passing of an ex post facto law, a process which upon the mere printing in the Government Printing Office here of the words "unfair competition" and the declaration that it is unlawful, accompanied by a debate in which nobody here is wise enough to define the offense, is perilous to enter upon. It gives this commission the power to summon a person before it and to find him guilty of a violation of the law and order him to stop it for an offense committed a week or a year before that time, before anybody had decided that the facts which they say constitute a violation of the law would, in fact, be a violation of the law.

I do not think that is American. I think if Congress wanted to set up a new offense in this country, it is the business of Congress to tell the people what shall constitute that offense. That may be all wrong. I know when we say murder is unlawful and shall be punished by death, we say what shall constitute the offense of murder.

We say it shall be the unlawful, premeditated killing of a person. That is some definition to a man. He knows now what murder is. We say that stealing shall be the taking and carrying away of some personal property in the possession of another. People of ordinary intelligence can tell what it is when we would prohibit stealing, if we did it. We do not, of course, but State laws do. We say that burglary is the unlawful breaking and entering into an inclosure or a building, and that is made a felony. But here we say unfair competition is unlawful, and there is not one of us, or all of us together, able to tell the people who the commission may in the future decide have committed that offense what things they are to do in order to commit it, or what things they are to refrain from doing in order to be sure that they have not violated the law, and that in a bill in response to a message of the President of the United States calling upon Congress to help the poor, puzzled business man, who is now under the operation of the Sherman law prohibiting restraints of trade, by illuminating him as to exactly what he can do and what he can not do.

The junior Senator from Minnesota [Mr. CLAPP] yesterday read the President's message in which he stated substantially that the experience of the country had now sufficed, and the people of the country demanded that the Congress should lay down a definite, precise rule, should define the offenses, the specific acts which should be prohibited, so that the honest business men of the country who do not want to violate the law may not be trapped or punished for doing an unlawful thing when they had no intention of doing an unlawful act.

Mr. President, I regard this bill as utterly irresponsive to the message of the President. I regard the bill as seriously defective in many other parts. This is one of the worst of them; but I think the inquisitorial features of the bill are simply outrageous.

I think the point made by the Senator from Tennessee yesterday in his speech, that Congress, having no jurisdiction whatever over intrastate commerce, but only over commerce among the States, in conferring upon this commission the authority to investigate every corporation which at all is engaged in commerce among the States, as to its organization, its relation to other corporations, and its practices, its methods, its

financial standing, and so forth, it is impossible to limit the examination there to be made to the constitutional function of Congress to regulate commerce among the States.

The intrastate commerce of these corporations is adequately protected now, and the people of the States are adequately protected by their own State laws; but all those things, including the organization of the company which is organized by the home State, are attempted to be placed under the jurisdiction and control of this commission, and the two things are inextricably mingled.

The attempt is made all the way through this legislation and the debates on it to justify it on the ground that it is analogous to and almost perfectly parallel with the establishment of the Interstate Commerce Commission. Mr. President, it differs as broadly from that as the night does from the day. This is the attempt and the first assertion of the wisdom of the Congress of the United States to reach out and regulate the details of private business. The private business of this country is charged with no public use.

Mr. WEST. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Connecticut yield to the Senator from Georgia?

Mr. BRANDEGEE. I do.

Mr. WEST. Does not the Senator think there is a difference as wide as the gulf between private business and corporations in the nature of a public utility?

Mr. BRANDEGEE. I do, Mr. President. Of course nobody will deny the right of Congress to regulate commerce among the States, no matter by whom conducted. The question is as to the wisdom of this Central Government here at Washington setting up a Federal tribunal to visé the transactions and approve or disapprove the practices and methods of the various trade associations of this country in private business, business that men engage in with no idea of benefiting the public at large in any way except that it is a good thing to have business in a country, charged with no public use, not offering to serve everybody alike, not common carriers, with the right to sell to whom they please at the price they please and to compete in any way they please within the law. The question is as to the wisdom of the Federal Government here at Washington attempting to regulate all the attempts of the different corporations which are rivals for business to get business.

Mr. President, I do not believe that the business of this country can be conducted by a Federal commission sitting here at Washington. I do not believe if the business men understand this bill that they favor it. I do not believe that it will be possible over 48 sovereign States, with their rights to charter their own corporations to do their business as they want and as they are accustomed to do it, for a Federal tribunal at Washington, with men appointed by the President of the United States to hold office for seven years apiece, adjudicating from day to day upon complaint before that commission of the hundreds of thousands and millions of devices which the various agents and drummers of these corporations competing among themselves by mail by all sorts of different business devices can use. I do not believe that the business of the country can be conducted in that way. It is insufferable and intolerable. The only reason I can give why the business men have not protested against this more vigorously than they have is, first, they do not know what is in the bill; second, many of them would not thoroughly understand the legal points involved if they did; third, they fear to come on here to make a fight against what they do not want and what would be injurious.

Mr. GALLINGER. They would be called lobbyists if they came, would they not?

Mr. BRANDEGEE. They would not come because they would fear they would be headlined in the newspapers over the country as insidious lobbyists.

Mr. GALLINGER. And haled before the committee.

Mr. BRANDEGEE. And investigated by the "lobby" committee or some other Federal institution. They have their wives and their families and their reputations and their standing in their communities, and they are not anxious for that sort of notoriety. Many of them are trusting in the Lord in some way to avert this calamity. Many of them are sticking their heads under the sand and hoping that it will hit the other fellow and that they will escape. Many of them are under the delusion that this inquisition is simply going after the fellow whom they regard as the fellow who is using unfair methods to compete with them, while they themselves think that their methods, of course, are all fair and all right, and think no doubt that the commission would always find that they were all right and that it was their competitor who was doing the unfair thing.

As I said the other day, no lawyer ever had a client who would admit that he intended anything except what was just and right and reasonable and fair, and he could not understand how the other fellow who was claiming the other thing could be an honest man if he claimed it.

We do not agree about what is right and fair. We do not agree among ourselves about what constitutes senatorial courtesy. We are all the time complaining of each other that our fellow Senators do not treat us fairly. I am not always disposed to leave it to some Federal tribunal, but this offense is not made one capable of definition, and therefore it can not be ultimately made an offense.

Everybody agrees with the Senator from Arkansas [Mr. CLARKE] or was it the Senator from Ohio [Mr. POMERENE], who stated this morning that what was fair or unfair would vary with the moral perceptions of the people who decided it, and, of course, it will. You might just as well attempt to get the men who differ about religion to agree upon a common religion that they would all adopt as to agree upon a thing that they would all say was fair. You can not go to a ball game without fearing that the umpire will get mobbed because he has made an unfair decision.

This tribunal, this unknown tribunal—five men—are to be selected from somewhere, from men familiar with large business, in which case the cry will at once be raised that the administration has sold out to the interests, or else men who do not know anything about business and hence are unfit to judge of their fellow business men, in which case the business men will say that they are being persecuted.

I am perfectly certain that this sort of government by commission can not go on in a free country. I am perfectly certain that a commission of honorable men with the best intentions can not perform, to the satisfaction of the country, the duties imposed upon it here.

The Supreme Court of the United States, charged with enforcement of section 5, could not administer it for one year without producing riot in the country. You can not legislate a moral perception about which men may differ, which we admit our inability to define, and make it unlawful, and let it go at that, and run away from the definition, and say we know we can not define it; we do not know what it means, therefore we will shovel it onto the court, and then we will denounce the court and "sick" the people on the courts if they set the law aside as being void for uncertainty, when we admit ourselves that it is so uncertain that we can not touch it with a definition; and when the courts decide that it is absolutely void, un-American, unpatriotic, and an outrage upon a free country, then the demagogues will raise their voices against the courts. But the courts will do their duty regardless of the consequences—I am certain of that—and if they do not the people will do their duty.

They will send men down here who will decline to vote to perpetrate such outrages upon a free country. They will demand the repeal of this sort of government by commission, the people being put in leading strings all over this country.

We are told about business being poor and nothing but confidence lacking to its being good. Do you suppose you can make business men move freely, with confidence, go out with enthusiasm to compete with each other by putting upon every one of them a hair shirt which is going to itch at every pore every minute, and put a Federal detective back of him and expect him to harry him by every competitor with whom he competes, writing him letters saying if he does not submit to that particular thing he will complain and the Federal trade commission will drag him down to Washington? Is that what is called the "new freedom" in this country? That is what I want to know. If it is, we are getting our new freedom, emancipation proclamations, declarations of independence, and all that twaddle talk from ancient Egypt, buried 10,000 years ago, where it ought to have stayed buried, with its back to the resurrection.

There is no sense in this sort of government, or attempt at government, of a free, intelligent people by such half-baked legislation as that. I shall vote for one of these amendments, so that at least the man who has been arbitrarily sentenced by this commission can get before a civil tribunal if the bill has to be passed, and then I shall vote against the bill on its passage.

Mr. STONE. Mr. President, I wish to say just a few words and only a few words with reference to the amendment as now proposed by the Senator from Ohio. Ordinarily I am disposed to follow the lead of the committee of the Senate which has devoted much time and thought to the preparation of a bill or an amendment to a bill. Ordinarily I do that unless my own

judgment is so at variance with that committee as to be irreconcilable.

As I understand the amendment of the Senator from Ohio as he now proposes to amend it, it would not permit the district judge to open up a case coming to him in such way as to hear new or additional evidence from that heard by the commission.

Mr. POMERENE. Mr. President, the Senator is correct except that perhaps I should add that the commission on the introduction of any new evidence may at any time modify any former order it may have made.

Mr. STONE. The commission itself is authorized to modify the order. I was addressing myself particularly to the jurisdiction of the court.

Mr. POMERENE. The court would hear and determine the case upon the record as it came from the commission.

Mr. STONE. I so understand. The apprehension I have and the criticism I make of the Pomerene amendment in the form now proposed is that it would in effect substitute one man, namely, the judge, for the commission composed of five or more men. The judge would take the exact testimony heard by the commission, preserved in the record, and decide whether the order made by the commission was warranted by that testimony and whether it should stand.

In other words, the judge would decide whether he would decide the issues as they were decided by the commission. That would be the substantial and practical effect of the Pomerene amendment with the elimination of the words that he desires to have stricken out.

I am very much in favor of the principles involved in this legislation. There is no doubt that there are in the country evils of the kind intended to be cured by this bill—great evils that do immense harm—and I think within the Constitution the Congress can enact legislation along this line to put an end to or to minimize these evil practices. I am very much afraid, however, that if we are to authorize this commission to hear a case and decide it, and then allow either party to the litigation an appeal to a district judge, to take the record up for his examination, and empower him on that exact record to say that the findings and order of the commission were not warranted, it would very much embarrass the administration of this proposed law. I can not get my mind away from the belief that it is wiser to pursue the practice which has been established and followed in cases originating in the Interstate Commerce Commission. If the so-called Pomerene amendment is agreed to it will very much enlarge the field over which the court would exercise jurisdiction, far beyond the limitations that have been placed upon judicial construction and action by the Supreme Court in cases reviewed by the court originating in the Interstate Commerce Commission.

This bill, if enacted into law, will be experimental—too much so, I fear—and I very much wish that the committee and the able Senators who have prepared this amendment could have adjusted the form of their proposal more nearly to the rules of practice and of construction followed in railroad cases originating in the Interstate Commerce Commission.

It is because of this fear that I reluctantly hesitate to give my assent to the amendment of my friend from Ohio.

Mr. MYERS. Mr. President, I have the honor of being one of the members of the committee who voted in the committee for the amendment offered by the Senator from Ohio [Mr. POMERENE], and I intend to vote for it here. I think it highly desirable.

While I do not agree with the scathing arraignment of this bill made a while ago by the Senator from Connecticut [Mr. BRANDEGEE], I believe that what he says makes it all the more imperative that this amendment should be adopted. By the pending bill Congress is about to lay the heavy hand of the Government on the business of the country and to declare how business may be conducted and how it may not, and to say that that shall be done without full right of recourse, by those to be affected, to the courts, is, to my mind, inconceivable. We are undertaking to remedy certain wrongs of which the people complain; but, while the people have their rights, business, too, has its rights. To provide that those rights shall be passed upon and adjudicated without the full right of recourse to the courts is, to my mind, a novel proposition. The right of a man or of a corporation to conduct business in such way as he or it may think proper, provided it does not interfere under the law with the rights of others, is a valuable property right; it is an inherent property right. To enact that that right may be taken away from a man or from a corporation without the full right of recourse to the courts of the country and without a final judgment of the courts is, to my mind, an anomaly. I do not believe that any property right ought to be taken away from anybody, whether individual or corporation, without full right of recourse to the courts of the land.

The proposed trade commission will not be a court; it will not have judicial powers; it will not necessarily conduct its inquiries according to the rules of court procedure or the rules of evidence or any rules of law. There does not need to be a single member of the commission a lawyer; all may be laymen. To provide that these men shall pass on valuable property rights, which may affect the investments of millions of dollars, without full right of recourse by those affected to the courts, to be there passed upon according to law, is, to me, incomprehensible.

We are entering upon a new field, a new scene of action, an unknown sea of legislation that has never before been explored in this country. Some of our Republican friends characterize it as a most reprehensible and obnoxious venture. While I do not agree with them in that, I think we should proceed carefully and allow everybody who may be affected by this new venture in the field of governmental regulation the full right of recourse to our courts. I do not believe that anyone should be denied the right to conduct his business in such manner as he may see fit without the final judgment of the courts upon the question. To do so would be unparalleled, unprecedented. It would infringe natural, inherent rights of men. It would disregard rights which are justly entitled to protection.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. MYERS. With pleasure.

Mr. THOMAS. Let me ask the Senator whether if we must have a commission that which is proposed by the other House is not preferable to that which is proposed by the Senate? Taking the House bill in its entirety, which was framed after very careful consideration and very careful hearings, is not the commission therein constituted preferable to the one which is proposed by the Senate? In other words, in view of the character and the nature of the duties of the commission as outlined in the House bill as compared with the powers which are imposed upon the commission by the Senate bill, is not the commission provided for by the House bill preferable?

Mr. MYERS. That is altogether a matter of opinion, Mr. President.

Mr. THOMAS. Of course, and I want the Senator's opinion upon it.

Mr. MYERS. I do not think so. The House bill does not provide for any prohibition of unfair competition, and that, I think, is one of the most valuable features of the pending bill. It is based on one of the most widespread and extended complaints of the people of this country, and is intended to remedy that; but to say that a board or a commission of five men, not one of whom need be a lawyer or know anything about law, and which may conduct its hearings in a summary manner and not necessarily according to rules of law or court procedure or the rules of evidence, may pass upon and make a final adjudication without the full right of recourse to the courts of the country, upon questions involving valuable property rights, involving the investment of millions of dollars—aye, many millions of dollars, is, I think, unjust to the business interests of the country that are to be subjected to this governmental regulation.

Certain malignant growths have appeared in the commercial life of the country, of which the people justly complain, and we are now applying the surgeon's knife to eliminate them, but I think it ought to be applied very carefully and discreetly and with some power of reviewing the acts of the commission according to the law of the land.

It has been said here, I understand, this morning—I could not be present all of the time—that if the courts are allowed to pass upon the acts of the trade commission it will start a complainant upon an endless career of litigation that it will take years to settle. That may be true, but that is not so bad as saying to citizens of this country, with millions of dollars invested, "You shall not see the inside of a court room. Valuable property rights may be taken away from you upon the decision of five men, but you shall not take the matter into court at all; you shall never see the inside of a court."

I know that long litigation is oppressive and distressing and disastrous; a man does not like to bring a lawsuit if he knows it is going to run the gamut of the courts for years before reaching a final adjudication; but that is not so bad as to have written over the courthouse door, "You shall not enter here; you shall not bring your complaints here at all." I had rather have the prospect of a long-drawn-out court proceeding, with a final adjudication some time, if I had a grievance, than to go

to court and see written above the courthouse door, "Thou shalt not enter here," and never get into court at all. That would be far more destructive of the inherent rights of man than to be subjected to some delay by court procedure.

Mr. STONE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Missouri?

Mr. MYERS. With pleasure.

Mr. STONE. If what the Senator from Montana says is true, then the amendment pending would be intolerable, but I do not understand that litigants before the commission will be excluded from the courts and that the courthouses will have over their doors, "You can not enter here." There is no provision of that kind, nor is there any effect of that kind.

Moreover, I should like the Senator to answer me this—and I am not saying this in a critical way, in a controversial way, but desire to obtain the judgment of the Senator—if we are going to try the case wholly, in all of its details, on its merits before the district judge, why not go before him in the first instance?

Mr. MYERS. Because this bill provides for a summary disposition of complaints by the commission in a manner much more expeditious and convenient than they could be handled by court procedure, and the probability is that many of the complaints will be finally adjudicated by the commission and will go no further.

Mr. STONE. But the amendment of the Senator from Ohio, as amended, provides for a summary hearing before the district judge.

Mr. MYERS. Yes. The amendment of the Senator from Ohio so provides, and wisely so; and there may be other amendments that so provide; but the amendment of the Senator from Ohio is the only one, I believe, which provides for a full right of review as a matter of course and of right by any aggrieved party. It provides for a review by a court a good deal like the review by an appellate court of the proceedings of a trial court.

These are my views of the matter. I regret that I was not able to be present to hear the able argument which I understand was made this morning by the Senator from Arkansas [Mr. CLARKE], in whom I have great faith and for whose opinions I have great respect. I regret, too, that in this instance I can not agree with the Senator from Iowa [Mr. CUMMINS], who has rendered very valuable service in the construction of this bill and for whose opinions I have the greatest respect and whose views always have great weight with me. I have been in accord with him on nearly everything in regard to the bill; but in this particular instance I regret that I can not agree with him. It seems to me that the inherent right of a man to a full court review of his grievances, passed upon by a board, is so strong and sacred that the amendment of the Senator from Ohio best answers the purpose. I think it in accordance with right and justice, that nobody will suffer from it, and that prudence requires its adoption. Let us be careful in the framing of this new legislation, designed to enter upon a new field of governmental regulation fraught with some risk.

Mr. WHITE. Mr. President, if the proposed amendment of the Senator from Ohio to his amendment is to be adopted, it seems to me that we will be doing that which is unnecessary; in other words, we will be providing for two trials, receiving the benefit of but one. We will be increasing the expense and trouble of having a trial before the commission, although the decision of that commission may be set at naught by an appeal to the court that will try the case on the record and be deprived of the advantage of having heard the testimony at first hand from the witnesses themselves and thereby enabled to form a more correct conclusion, such as the commission could form by hearing the testimony as it was delivered by the witnesses.

Lawyers all understand that appellate courts can never decide a question of fact nearly as well as the trial court can, for the reason that the trial court has before it the witnesses, and has an opportunity of seeing them when they testify. It can reach a better conclusion as to their intelligence, their interest, their fairness, and disposition to speak truthfully. The appellate court has none of these advantages in weighing the evidence. It sees only the cold, lifeless record, and by this record determines where the truth abides.

Mr. MYERS. Mr. President, may I make a suggestion there?

Mr. WHITE. Certainly.

Mr. MYERS. I understand it to be a general rule of law in all jurisdictions where the common law prevails that the appellate court is largely guided as to questions of fact by the conclusions of the court below, and the court in this instance would doubtless follow that rule and not disturb the findings of fact on the evidence before the commission unless there were overwhelming reasons for doing so.

Mr. WHITE. But, Mr. President, the difference is that the record of the trial of the case by the commission is transferred to the court without having any of the safeguards thrown around it that would be thrown around a trial in an ordinary case, where the judge decides the questions of law presented and where the jury decides upon the questions of fact.

I think, really, we had better not create the commission if we are to adopt the amendment which the Senator from Ohio has suggested. It will render the commission absolutely useless; it will embarrass the situation and make more difficult and more tedious and tortuous the route to the end of the litigation. It will necessitate two trials, the first one before the commission composed of gentlemen who are not lawyers and who can not throw around the trial many of the safeguards which lawyers think should be thrown around it. All kinds of testimony may be admitted, illegal as well as legal. Valuable testimony may have been improperly denied by the commission; the court trying the case would not have the benefit of that evidence, but would be bound, as an appellate court is ordinarily bound, to try the case upon the record presented.

I think, Mr. President, to adopt the amendment would be a mistake. If we are going to have a commission we had better give it such authority as will give it life. Give its decisions the weight that will make them effective and cause them to be respected.

I am not, Mr. President, one of those who believe that all the virtue of the country is embodied in the lawyers or the courts, and yet I have as high regard for my profession as any man, and I believe as sincerely as one man can believe in the fairness and integrity of the courts. But they are human; they are just as likely to err as other men. Experience has taught us—we are admonished by it—that courts are not the best triers of facts. That idea was brought to us by our English ancestors when they came to this country.

In England, for centuries before this country was discovered, experience had demonstrated to our ancestors that juries were better triers of facts than judges. The mind of the judge is too technical to properly consider and weigh the common affairs of everyday life.

Mr. President, not only was the idea brought to us by our English ancestors that the judge is not the best trier of facts, but, sir, we have written that principle in the Constitution of the United States. It has been standing there since the foundation of this Government, and no man, so far as I know, has ever yet undertaken to say that it was wrong. No man of intelligence or at all familiar with the administration of justice has so declared.

Not only that, sir, but every one of the 48 States of this Union has written in its organic law that the judge is not the best trier of facts, but, on the contrary, they should be left to a jury. That is the fundamental law of every State in the Union. Are we now to depart from that and say that the decisions and findings of these triers of facts the most intelligent business men that we can find, men trained in business affairs, peculiarly qualified to decide questions of fact, are to be overturned by the decision of a judge, and that judge himself denied the privilege that the commission had of looking into the faces of the witnesses and observing them while testifying?

For that reason, Mr. President, I am in favor of the amendment offered by the Senator from Iowa [Mr. CUMMINS]. I think it is in line with what we are attempting to do. I believe that the adoption of the amendment offered by the Senator from Ohio will clog the wheels of progress and prevent the accomplishment of things that are intended to be accomplished by this legislation.

Mr. MYERS. Mr. President, I would suggest to the Senator that in every jurisdiction in this country the findings of fact of a jury are subject to the review of the appellate court and are sometimes set aside.

Mr. WHITE. Only, sir, when there is no evidence to support the findings. The court can not say how much evidence or what evidence is necessary; the court only has the power to say that there is no evidence.

Mr. MYERS. Mr. President, I submit to the Senator that the courts have said that there must be some substantial evidence, not a mere scintilla of evidence.

Mr. WHITE. That is true; but when I say no evidence I mean "no substantial evidence." But who is to judge of its substantiality; the judges or the juries? The courts can say that there is no evidence; that there is no substantial evidence; that there is nothing beyond a mere scintilla of evidence; but the courts can not undertake to say, and they have never un-

dertaken to say, and they will not say that the verdicts of juries rendered on facts are wrong. The amendment offered by the Senator from Ohio gives the court the right to say whether the findings of the commission are right or wrong, without regard to the evidence or without regard to the policy involved in the finding.

I am not one of those, Mr. President, who believe that the words "unfair competition" are incomprehensible, nor do I believe, sir, that they are too comprehensive.

Mr. MYERS. Mr. President, I should like to make one more suggestion to the Senator, as he is making a very interesting argument.

Mr. WHITE. Certainly.

Mr. MYERS. This proposed commission would pass upon questions of law as well as of questions of fact.

Mr. WHITE. Yes; but they pass on questions of fact as well as questions of law, and if the reviewing courts were to pass upon questions of law alone that would not be so bad, but they are to pass on questions of fact as well as law under the amendment offered by the Senator from Ohio.

Mr. MYERS. Mr. President, I will say that, in a large majority, litigation in this country involves questions of law and questions of fact.

Mr. WHITE. That is true; and by the amendment of the Senator from Ohio all of that is transferred from the commission to the court. It opens up a new avenue of danger, which is avoided by the amendment of the Senator from Iowa.

Mr. President, I am not apprehensive on account of any supposed uncertainty produced by the use of the words "unfair competition." They are not more indefinite than are many expressions encountered by the courts in administering the law. When we use the phrases "reasonably safe," "reasonably sound," or "reasonably adequate," we are using terms quite as indefinite and uncertain as is the phrase "unfair competition," but they have never balked the courts nor held in abeyance the enforcement of law.

In what respect, I ask, is "unfair competition" more indefinite, more uncertain, than the word "negligence"? Yet the courts have worked out a standard; they tell the jury—or, if the case is being tried by the court, the court will adopt the same standard—that "negligence" is that which a reasonably prudent man would or would not do under similar circumstances. "Unfair competition" can be applied by a like standard—that is, what a reasonably intelligent, honest, business man would do under similar circumstances. Take that as your guide, take that as your standard, and you have no more indefinite standard than you have in many other cases. Why, men are indicted, municipalities are tried, for not keeping highways in a reasonably safe condition. What is "reasonably safe"? That which would be so considered by a reasonably prudent man having in view similar circumstances.

I do not think there is anything that we need be afraid, Mr. President. I do not think the country is going to be frightened by shadows that are being cast so numerously at the feet of business men. They understand what is meant by the expression "unfair competition" as they know what is intended by this legislation. It is well known that unfair competition is being indulged in. The question presented to Congress is whether it will prevent selfish, greedy, wicked men from continuing to determine that their practices are legitimate or whether we will leave that question to the judgment and decision of five intelligent, honest, disinterested men, men to be selected by the Government. The question must be decided by one or the other. Which shall it be? I do not believe that Congress is rendered helpless because of its inability to find language sufficiently definite to deal with a situation such as is presented by the greed and avarice of those who are stifling competition in our business world.

Mr. President, I have said more than I intended, but I want to say that I think the amendment of the Senator from Iowa is far preferable to that offered by the Senator from Ohio, and I hope it will be adopted.

The PRESIDENT pro tempore. The question is on the adoption of the amendment of the Senator from Iowa [Mr. CUMMINS], in the nature of a substitute, on which the yeas and nays have been ordered. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHILTON (when his name was called). I have a general pair with the senior Senator from New Mexico [Mr. FALL], which I transfer to the senior Senator from Virginia [Mr. MARTIN] and will vote. I vote "nay."

Mr. CULBERSON (when his name was called). I transfer my general pair with the senior Senator from Delaware [Mr. DU PONT] to the senior Senator from Alabama [Mr. BANKHEAD] and will vote. I vote "yea."

Mr. GALLINGER (when his name was called). I have a general pair with the junior Senator from New York [Mr. O'GORMAN]. I transfer that pair to the senior Senator from Illinois [Mr. SHERMAN] and will vote. I vote "nay."

Mr. HOLLIS (when his name was called). I am paired with the junior Senator from Maine [Mr. BURLEIGH]. If I were at liberty to vote, I should vote "yea."

Mr. KENYON (when Mr. LA FOLLETTE'S name was called). I desire to announce the absence of the senior Senator from Wisconsin [Mr. LA FOLLETTE] on account of illness. Were he present, he would vote "yea."

Mr. MYERS (when his name was called). I transfer my pair with the junior Senator from Connecticut [Mr. MCLEAN] to the junior Senator from Kentucky [Mr. CAMDEN] and will vote. I vote "nay."

Mr. REED (when his name was called). Mr. President, I am not certain whether my pair is out of the city or not. I have a qualified pair, which is effective only when either my pair or myself is out of the city.

Mr. GALLINGER. The Senator from Michigan [Mr. SMITH] is out of the city.

Mr. REED. Under those circumstances I will withhold my vote; but if permitted to vote, I should vote "nay."

Mr. THOMAS (when his name was called). I have a general pair with the senior Senator from New York [Mr. ROOT]. In his absence I withhold my vote. If the Senator from New York were present, I would vote "yea," believing this amendment to be better than the original.

Mr. VARDAMAN (when his name was called). I have a pair with the junior Senator from South Dakota [Mr. STERLING]. In his absence I shall withhold my vote. Were I at liberty to vote, I should vote "yea."

Mr. WILLIAMS (when his name was called). I transfer my pair with the senior Senator from Pennsylvania [Mr. PENROSE] to the junior Senator from Virginia [Mr. SWANSON] and will vote. I vote "nay."

The roll call was concluded.

Mr. JAMES. I wish to announce the necessary absence of my colleague [Mr. CAMDEN].

Mr. CHAMBERLAIN. I have a general pair with the junior Senator from Pennsylvania [Mr. OLIVER], and in his absence I withhold my vote. If permitted to vote, I should vote "yea."

Mr. SAULSBURY. I am requested to announce the unavoidable absence of the senior Senator from Maryland [Mr. SMITH] and his pair with the senior Senator from Vermont [Mr. DILLINGHAM].

Mr. OWEN. I am paired with the junior Senator from New Mexico [Mr. CATRON]. If I were at liberty to vote, I should vote "yea."

Mr. SMITH of Georgia. I have a general pair with the senior Senator from Massachusetts [Mr. LODGE]. I transfer that pair to the junior Senator from South Carolina [Mr. SMITH] and will vote. I vote "nay."

Mr. REED. I transfer my pair with the senior Senator from Michigan [Mr. SMITH] to the junior Senator from Tennessee [Mr. SHIELDS] and will vote. I vote "nay."

Mr. GALLINGER. I have been requested to announce the following pairs:

The senior Senator from Vermont [Mr. DILLINGHAM] with the senior Senator from Maryland [Mr. SMITH];

The senior Senator from Delaware [Mr. DU PONT] with the senior Senator from Texas [Mr. CULBERSON];

The senior Senator from New Mexico [Mr. FALL] with the senior Senator from West Virginia [Mr. CHILTON];

The junior Senator from West Virginia [Mr. GOFF] with the senior Senator from South Carolina [Mr. TILLMAN];

The junior Senator from Pennsylvania [Mr. OLIVER] with the senior Senator from Oregon [Mr. CHAMBERLAIN];

The senior Senator from Michigan [Mr. SMITH] with the junior Senator from Missouri [Mr. REED];

The junior Senator from Wisconsin [Mr. STEPHENSON] with the junior Senator from Oklahoma [Mr. GORE];

The junior Senator from South Dakota [Mr. STERLING] with the junior Senator from Mississippi [Mr. VARDAMAN];

The junior Senator from Michigan [Mr. TOWNSEND] with the junior Senator from Arkansas [Mr. ROBINSON];

The junior Senator from Wyoming [Mr. WARREN] with the senior Senator from Florida [Mr. FLETCHER]; and

The junior Senator from New Mexico [Mr. CATRON] with the senior Senator from Oklahoma [Mr. OWEN].

The result was announced—yeas 33, nays 25, not voting, 38, as follows:

YEAS—33.

Ashurst	Gronna	Lee, Md.	Simmons
Brady	Hitchcock	Lewis	Smith, Ariz.
Bristow	Hughes	Martine, N. J.	Stone
Clapp	James	Norris	Thompson
Clark, Wyo.	Johnson	Overman	Weeks
Clarke, Ark.	Jones	Page	White
Crawford	Kenyon	Perkins	
Culberson	Kern	Sheppard	
Cummins	Lane	Shively	

NAYS—25.

Brandegee	Lippitt	Ransdell	Thornton
Bryan	McCumber	Reed	Walsh
Burton	Myers	Saulsbury	West
Chilton	Nelson	Shafroth	Williams
Colt	Newlands	Smith, Ga.	
Gallinger	Pittman	Smoot	
Lea, Tenn.	Pomerene	Sutherland	

NOT VOTING—38.

Bankhead	Goff	Penrose	Sterling
Borah	Gore	Poindexter	Swanson
Burleigh	Hollis	Robinson	Thomas
Camden	La Follette	Root	Tillman
Catron	Lodge	Sherman	Townsend
Chamberlain	McLean	Shields	Vardaman
Dillingham	Martin Va.	Smith, Md.	Warren
du Pont	O'Gorman	Smith, Mich.	Works
Fall	Oliver	Smith, S. C.	
Fletcher	Owen	Stephenson	

So Mr. CUMMINS's amendment, in the nature of a substitute, was adopted.

The PRESIDENT pro tempore. The question is on the adoption of the substitute proposed by the committee, as amended.

Mr. SUTHERLAND. Mr. President, on this question I intend to vote for the amendment proposed as a substitute for section 5 as it appears in the bill. Since I spoke upon this subject yesterday I have gone over the amendment proposed by the Senator from Iowa with care, a thing which I had not done when I discussed it yesterday. I took the statement of the Senator from Iowa as to what he thought would be accomplished by it, and concluded from that statement that the amendment would limit the power of the court to what has been denominated the narrow review. Upon a careful examination of the amendment I doubt very much whether it will accomplish that result, but I am inclined to think that under the terms of the amendment the court will be left free to adopt such rule as it believes it ought to adopt under the provisions of the Constitution without any express legislative limitation.

I voted against it as a substitute, and thereby intended to express my opinion in favor of the amendment proposed by the Senator from Ohio, which I preferred to this amendment because the amendment of the Senator from Ohio made it perfectly plain that the court was not to be restricted to the narrow review, but was left free to exercise its full judicial powers.

The provisions of the Cummins amendment, so far as that matter is concerned, are as follows:

> Any suit brought by any such person, partnership, or corporation to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in a district court of the United States in the judicial district of the residence of the person or of the district in which the principal office or place of business is located and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year of 1913 and for other purposes relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall apply.

Thus far it has related to the procedure, to the method of bringing the suit, to the number of judges who shall be compelled to hear the case, and so forth. Up to that point it does not establish any rule of evidence.

The next provision is:

> If within the time so fixed in the order of the commission, the person, partnership, or corporation against which the order is made shall not cease and desist from such unfair competition, and if in the meantime such order is not annulled, suspended, or set aside by a court, the commission may bring a suit in equity in a district court in any district wherein such person or persons reside or wherein such corporation has its principal office or place of business to enforce its said order, and jurisdiction is hereby conferred upon said court to hear and determine any such suit and to enforce obedience thereto according to the law and rules applicable to suits in equity.

That apparently leaves open the question as to the rule which the court itself shall follow in determining a case of this character.

Perhaps the matter is not wholly free from doubt; but there is, at any rate, no express provision in the proposed amendment which undertakes to limit the court to the narrow review. I think, therefore, the court will take hold of the matter when a case is brought before it, and if the court finds that the order which has been issued by the trade commission is of a judicial character it will then exercise its full judicial power over that matter. I do not think any act of Congress could constitutionally restrict the power of the court in that particular. If any action which may be taken by the commission is in the nature of the exercise of legislative power, and if the court should find—a thing which I think it can not find under this bill—that the primary standard has been laid down, and that the legislative act of the commission is within the primary standard, then I think the court would follow the rule which it has followed with reference to proceedings before the Interstate Commerce Commission. In other words, I think the section may be so construed by the court as to permit the court to adopt either method, in accordance with the character of the order which it may find the commission has adopted.

I utterly dissent from the doctrine which was maintained here this morning by the Senator from Arkansas [Mr. CLARKE], that we have any authority to confer upon any body but the courts judicial power, or any part of the judicial power. The authorities which the Senator from Arkansas read followed a well-known line of decisions, to the effect that, so far as the Constitution of the United States is concerned, a State may confer judicial power upon a person or body other than the courts, and may confer legislative power upon a body other than the legislature. Whether a State can do that or not would depend on the State constitution. The provisions of the Federal Constitution which divide these three general powers—the legislative, the judicial, and the executive—among these departments are a limitation upon the Government of the United States, and are in no manner a limitation upon the State governments. The State governments may provide for any method of distribution that they please, so long as what they do will not come within the inhibition of some other provision of the Federal Constitution which is directed against the authority of the State to do the particular thing; but under the Constitution of the United States judicial power—and that means all judicial power—is conferred upon the courts.

The Senator from Arkansas says there is nothing in a name; that we do not have to call a man a judge. That may be true; but the Constitution of the United States has also provided that the judicial power is vested in the Supreme Court and such other courts as Congress may from time to time ordain and establish. Now, it may be true that Congress may confer judicial power upon a body without calling its members judges; but the Constitution also provides that these judges who exercise the judicial power shall be appointed during good behavior. The members of this commission are not appointed during good behavior. Each member of it is appointed for a period of seven years; and that alone shows that it is not a court in any sense, and that judicial power can not be conferred upon it.

It is true that in the case of the Territorial judges we limited their term of office to four years; but we proceeded, in doing that, under an altogether different power of the Constitution, namely, the power which gives Congress authority to dispose of and make all needful regulations for the Territory and other property of the United States. We may limit the tenure of office of a judge in the District of Columbia, because we govern the District of Columbia under a separate provision of the Constitution; but when we are undertaking to confer the judicial power of the United States upon a body of men we can only confer it upon a body of men who, in substance and effect, constitute a court, whether we call them a court or not. The maintenance of the rule which forbids the commingling of these three, or any two of these three, powers in the same hands is of vital importance.

I want to read into the RECORD a very brief statement from Bondy on The Separation of Governmental Powers, where he quotes from Blackstone and some other writers. I shall read only the quotation from Blackstone.

He says:

> Wherever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed, in his quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself.

As to the necessity of the separation of the judicial from the legislative and executive power, he says:

> Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their opinions, and not by any fundamental principles of law, which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance of the legislative.

Then I call attention to these words of strength and wisdom which the author of this work himself uses:

> Thus where the legislative and judicial powers are exercised by distinct bodies the general laws are made by one body of men without foreseeing whom they may affect, and when made they must be applied by the other let them affect whom they will. The legislature will then have no private interests to serve, consequently its laws will be suggested by

considerations of universal effects and tendencies which always produce impartial and commonly advantageous laws.

So, Mr. President, while I very much prefer the amendment which was proposed by the Senator from Ohio [Mr. POMERENE], because that made certain what to some extent may be left in doubt by this amendment, for the reasons I have stated I intend to vote for it. When it is incorporated into the bill, however, I intend to vote against the bill, because while it will remove one of the objections which I made to the bill, and while the amendments proposed by the Senator from Nevada the other day, which are now pending, and for all of which I shall vote, will remove certain other objections, they do not by any means remove all of the objections which I think justly lie against this measure. They do not reach the question of the violation of the provision of the Constitution against unlawful search and seizure to which I called attention. They do not reach the objections I have made as to the inquisitorial powers of this body of men. They do not reach several of the objections I have heretofore made and which I shall not now undertake to repeat.

I am opposed to the idea of putting into the hands of a mere administrative body of men such far-reaching powers of espionage and control over the private business of this country as this bill seeks to do. I think we might very well define certain improper practices, as, for example, interlocking directorates, intercorporate holdings, and some particular forms of objectionable practice which might be specified.

All those definitions would have to be very carefully guarded, because if we were to inhibit broadly all intercorporate holdings and all interlocking directorates, I think that would result in great hardship in many respects and in injustice in many respects. Some provisions of that kind, carefully drawn and carefully safeguarded, Congress might very well adopt and then primarily turn over to a trade commission, if we undertake to create one, for administration. But when we write into the law this phrase "unfair competition," which the various sponsors of this bill each have a very clear notion about, but with reference to which they unfortunately disagree, we are putting into the statute books of the country a law which, in my judgment, if it be enforced, is bound to result in indescribable confusion to the business interests of the United States.

Mr. NEWLANDS. Mr. President——

Mr. SUTHERLAND. I yield.

Mr. NEWLANDS. May I ask the Senator whether he regards the so-called Cummins amendment as giving a broader court review than section 5 of the bill as reported from the committee?

Mr. SUTHERLAND. Section 5 as reported from the committee gives no review at all. That was the basis of the criticism which I made upon the subject of its conferring judicial power. Let me illustrate——

Mr. NEWLANDS. But is the Senator of the opinion that under section 5 of the bill, as it was reported, the court would have no power whatever over the order? Section 5 as reported provides that the order can only be enforced by the court. What power does the Senator think the court could exercise with reference to such an order?

Mr. SUTHERLAND. I think under section 5 as originally reported the court would have the power to declare it utterly unconstitutional, and that would be the end of it. The courts are not given the authority to review in any way the findings of this commission. They are simply given the authority, when they find that an order of the commission has been made and that that order has been disobeyed by the corporation, to perfunctorily issue an injunction commanding obedience to the order. That is all there is about it, so far as the original section 5 is concerned. It is that fact that was the basis of the objection which I made, that it undertook to confer judicial power. I can illustrate——

Mr. NEWLANDS. Does the Senator doubt at all that upon the petition of the commission to the court for an injunction to issue upon its order the court could consider in that case whether the constitutional rights of the corporation were invaded? Does the Senator doubt that the court in that case could consider the question as to whether the order was within the authority conferred by the statute? Does the Senator doubt that the court in that case could determine whether or not the facts upon which the order was based constituted the offense of unfair competition?

Mr. SUTHERLAND. Has the Senator finished?

Mr. NEWLANDS. That is all.

Mr. SUTHERLAND. Mr. President, I doubt all those things. The court would have before it no case which presented those questions, because upon examining the statute which was the basis of the order that they were called upon to review they would find that that statute was void, and that would be the end of it. Of course, if a statute was passed which is unconstitutional and therefore utterly void, the proceedings under the void statute would not present a case which the courts could review. The only thing the courts could do and should do—and I am quite sure in my own mind that they would do—would be to declare that section 5 was entirely outside of the constitutional authority of Congress.

Mr. BRANDEGEE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Connecticut?

Mr. SUTHERLAND. Yes.

Mr. BRANDEGEE. I will say to the Senator from Utah that my impression is that the friends of the amendment known as the Cummins amendment, which has just been adopted, do not think that under it the court could look at the facts and say whether the facts would constitute the offense.

Mr. SUTHERLAND. I know that is their position. If the amendment proposed by the Senator from Iowa had said in so many words that the court was in its review confined to determining, first, whether or not the commission has acted within its power, and whether or not its action is in conformity to the Constitution, I would unhesitatingly have voted against the amendment. I am going to vote for it, because I think after a careful examination of it the amendment will not be construed by the courts as some of the proponents for it have construed it. I may be mistaken about that, but I have tried to read it with some care, and I think I am right.

But I was going to call the attention of the Senator from Nevada to the distinction between these powers that I am speaking about. Under the interstate-commerce act it is true there are two classes of powers that are conferred upon the commission. One is to inquire as to whether or not given rates are reasonable, whether given practices are fair, and then not to pass judgment against the railroad company guilty of extorting unreasonable rates or of indulging in unfair practices, not to impose a penalty, not to issue an injunction, but to fix a rate for the future, to lay down a course of conduct for the future, both of which are in essence legislative acts. As to that character of acts, the court will not review the facts upon which the action of the commission was taken any more than the courts would review the facts which might have moved the Congress of the United States in taking similar action.

A State legislature, for example, investigates the railroad situation and adopts a law which requires a railroad company to charge only 2 cents a mile for passengers. That is a legislative act. The courts would review that action in order to determine whether or not the charge which they have allowed the railroad company to make is so low as to be confiscatory and therefore in violation of the provisions of the Constitution, but they will not inquire as to the evidence upon which the legislature acted in passing the law.

Now, it is altogether different when we come to the quasi judicial functions of the Interstate Commerce Commission. Let me call the Senator's attention to section 16, which is—

That if after hearing on a complaint made as provided in section 13 of this act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

Now, mark:

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal.

The effect of that is simply to make the Interstate Commerce Commission, as I said the other day, a sort of referee to investigate the facts and making a finding upon them, or a so-called order upon them, which the carrier is at perfect liberty to disregard or to follow.

The Senator from Arkansas [Mr. CLARKE] seemed to find some fault this morning with my statement that it would be simply in the nature of good advice. Yet, after all, that is all it is. It is not a judgment upon which execution shall issue or which can be enforced as such. It is simply good advice to the carrier to the effect that after investigating this subject it is our opinion that you owe these complainants some money, and we think you ought to pay it, but if the common carrier

does not choose to follow that advice the whole matter is open to the courts.

I think if the words "unfair competition" have any legal meaning and are to be confined to their legal meaning, what this commission does when it inquires whether or not somebody has violated this section 5 is similar to what the Interstate Commerce Commission does when they investigate the question of a money claim. When the commission issues an order upon that it simply issues a piece of advice to the corporation involved, saying, in substance and effect, we think you have violated this law and you had better cease the practice; and if the corporation does not see fit to do that under this proposed amendment the case goes to the courts. Without any amendment the whole thing stops there, except that you have attempted to put into your provision a perfectly abortive thing, namely, a direction to the court to enforce the order of the commission, without any inquiry as to the facts upon which it was originally based.

Mr. President, I discussed that question at some length on yesterday and on preceding days. I did not intend to go over it again. For reasons I have given, I intend to vote for the amendment, and then I intend to vote against the bill.

The PRESIDENT pro tempore. The Chair desires to make a statement. In view of the fact that the Senator from Nevada, the chairman of the committee, accepted the so-called Pomerene amendment as a part of the committee amendment, it became the text of the bill. The amendment offered by the Senator from Iowa, therefore, was to strike out and insert. It requires no additional concurrence, the affirmative votes on that having the effect of striking out from the committee report the Pomerene amendment accepted by the chairman, and the Cummins amendment is now a part of the text of the bill.

There is another statement the Chair desires to make. On yesterday the Chair was under the impression that the adoption of the Cummins amendment would have the effect of eliminating, if that amendment should be adopted, the proviso prohibiting the admittance of the order or finding of the court or commission in the enforcement of section 5 as evidence in any suit, civil or criminal, brought under the antitrust acts. An inspection of the amendment shows that it was not intended to interfere with the adoption of that amendment.

Mr. BRANDEGEE. Mr. President, as I understand the Chair, he holds that when any committee, after it has reported a bill to the Senate and which was in the possession of the Senate, had agreed to recommend that the report of the committee to the Senate should be amended in a certain way, thereby the bill pending in the Senate becomes amended without any action by the Senate.

The PRESIDENT pro tempore. The proposer of an amendment may modify it.

Mr. BRANDEGEE. The amendment is a committee report, and while I agree that an individual Senator may modify any amendment that he proposes——

The PRESIDENT pro tempore. The Senator from Nevada said the matter had been presented to the Interstate Commerce Committee, and the request submitted by him was on behalf of that committee. The Chair presumes that the committee has the same control over its amendments that an individual Senator would have over his own amendment.

Mr. BRANDEGEE. If I may be allowed to state coherently my notion about the matter, it is this: The committee reported the House bill to the Senate recommending that all after the enacting clause be stricken out and that certain matter printed in italics be inserted in lieu thereof. That is the measure before the Senate. That was done on June 13. The other day, within three days certainly, the Committee on Interstate Commerce, or a quorum, met and agreed to report to the Senate a proposed amendment to what they had previously reported. It seems to me that the mere subsequent report of a committee of a proposition to amend what they had previously reported should be amended on the floor of the Senate; that the committee can not ipso facto act for the Senate as though it was the action of the Senate; that it must be acted upon as any other committee amendment would be acted upon. When the committee has reported, it has lost jurisdiction or control of what it has reported, and it must make recommendations as to changes which it may desire to have made.

What the committee had originally reported June 13 was merely a recommendation to the Senate that the House text should be amended as indicated. Having done that, it takes me by surprise to have it asserted that the committee may subsequently recommend that what they have already recommended should be modified, and that that modification shall be made without the consent of the Senate or any action by the Senate. That in brief is my point.

Mr. SMOOT. Mr. President, I rose to a parliamentary inquiry some time ago. In my inquiry at that time I asked the Chair if the amendment offered by the Senator from Ohio had been acted upon by the Senate and the Chair——

The PRESIDENT pro tempore. It was made the text of the committee amendment by the action of the Committee on Interstate Commerce. The committee proposed to amend its amendment under the right given to that committee or to any individual Senator to modify an amendment. That is the ruling made yesterday, and it was not excepted to.

Mr. SMOOT. I understand that the chairman of the committee had a perfect right to perfect his amendment, but in perfecting the amendment it must be agreed to by the Senate.

That is the parliamentary inquiry to which I rose before, as to whether it had been acted upon by the Senate. If it had been acted upon by the Senate then the amendment of the Senator from Iowa was simply an amendment to strike out and insert, but if it had not been acted upon by the Senate, then it was an amendment in the second degree.

The PRESIDENT pro tempore. The Pomerene amendment was made a part of the proposal of the committee. But that is a moot question at this time. The Senator from Nevada proposes certain amendments to the bill.

Mr. SUTHERLAND. Mr. President, it does not seem to me that we have finally acted upon the Cummins amendment.

The PRESIDENT pro tempore. We have, for this reason: The Pomerene amendment was made the text of the committee report by the withdrawal of the original section 5 and by the adoption by the committee of the Pomerene amendment. The parliamentary attitude of the amendment offered by the Senator from Iowa was to stike out the so-called Pomerene amendment, it having been made a part of the text of the bill, and to insert the amendment offered by him. That has been done.

Mr. SUTHERLAND. Very well.

Mr. BRANDEGEE. It may be that it is only a moot question, but I think it is an important question. I had supposed that when a committee had reported to the Senate, the report was in the possession of the Senate and it was for the Senate to perfect the matter which had been reported by the committee.

I am not going, of course, to appeal from the ruling of the Chair, but I simply want it recorded in the RECORD that I protest against it, and I do not want it to serve as a precedent.

The PRESIDENT pro tempore. It will be noted. The Chair understands that the Senator from Nevada proposed certain amendments yesterday. The clerks say that they have not been noted as having been proposed by the Senator.

Mr. CLARK of Wyoming. Mr. President, simply to make the ruling of the Chair perfectly plain, and for my own information of the parliamentary procedure, do I understand that it is the ruling of the Chair that the committee having made a report upon a bill to the Senate the committee can thereafter at any time before the Senate acts upon the bill change the text of the reported amendment?

The PRESIDENT pro tempore. The Chair proceeded under this rule:

> Any motion or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave.

The Senator from Nevada, in charge of the bill on behalf of the Committee on Interstate Commerce, modified the amendment reported by the committee by striking out certain matter and inserting other matter.

Mr. CLARK of Wyoming. The question in my mind right now is, Did the Senator from Nevada ask permission of the Senate to do that?

The PRESIDENT pro tempore. That was done yesterday without any objection, and we can not go back of that action at this time.

Mr. NEWLANDS. I ask whether it is in order now to offer any amendment to section 5, the Cummins amendment?

The PRESIDENT pro tempore. An amendment of that nature is not in order as in Committee of the Whole.

Mr. NEWLANDS. The Chair rules that it will not be in order until we get the bill into the Senate.

The PRESIDENT pro tempore. The Chair so rules.

Mr. NEWLANDS. I offer an amendment on page 17, line 22. After the word "engaged" I move to strike out the words "or concerning its relation to any individual, association, or partnership" and substitute the words "relating to or in any way affecting the commerce in which such corporation under inquiry is engaged."

The PRESIDENT pro tempore. The Senator will indicate the page and line so that the clerks may get the amendment.

Mr. NEWLANDS. Upon page 17, line 22, after the word "engaged."

The PRESIDENT pro tempore. In the printed amendments proposed by the Senator from Nevada an amendment appears that, on page 17, line 9, after the word "commerce," to strike out the words "and its relation to other corporations and to individuals, associations, and partnerships."

Mr. NEWLANDS. I see.

The PRESIDENT pro tempore. The amendments now offered by the Senator from Nevada have been printed, and if he will send them to the desk and let them be read it will be much more easy to grasp what is being done.

Mr. NEWLANDS. I wish to add some words to that amendment.

Mr. MYERS. Will the Senator from Nevada yield?

Mr. NEWLANDS. Certainly.

Mr. MYERS. Before we get away from this matter, I desire to reserve the right to have a separate vote in the Senate, when the bill is reported from the Committee of the Whole, upon the amendment of the Senator from Iowa [Mr. CUMMINS] which was adopted.

The PRESIDENT pro tempore. Notice will be taken of the suggestion of the Senator from Montana. The Chair suggests to the Senator from Nevada that he send his amendments to the desk that they may be reported.

The SECRETARY. The Senate has already agreed to the amendment on page 17, line 9, to insert after the word "commerce" the words "relating to or in anyway affecting the commerce in which such corporation under inquiry is engaged."

Mr. NEWLANDS. Has that already been adopted?

The PRESIDENT pro tempore. The recollection of the Chair is otherwise. It has been proposed.

Mr. NEWLANDS. I will ask whether that amendment struck out the words "and its relation to other corporations and to individuals, associations, and partnerships"?

The PRESIDENT pro tempore. There is some confusion about the record, and the confusion will be increased unless the Senator reduces his amendments to writing and sends them to the desk so that they may be presented in the regular way. The Chair can not entertain an amendment unless the Senator conforms to the rule of the Senate.

Mr. NEWLANDS. Then, on page 17, line 9, after the word "commerce," I move to strike out the comma and the words "and its relations to other corporations and to individuals, associations, and partnerships."

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. On page 17 of the proposed committee amendment, lines 9, 10, and 11, strike out the words "and its relation to other corporations and to individuals, associations, and partnerships."

The PRESIDENT pro tempore. The amendment is agreed to unless there is objection. The Chair hears none. Are there further amendments to be proposed?

Mr. NEWLANDS. On page 17, line 22, after the word "engaged," I move to strike out the words "or concerning its relations to any individual, association, or partnership."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 17, in the committee amendment, lines 22 and 23, strike out the words "or concerning its relations to any individual, association, or partnership."

The PRESIDENT pro tempore. The amendment will be agreed to unless there is objection. The Chair hears none.

Mr. NEWLANDS. On page 20, line 11, after the words "United States," I move to strike out the words "and also to investigate whether American exporters have combined with each other or with foreign producers or dealers to control prices abroad."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In the proposed committee amendment, page 20, beginning with line 11, after the words "United States" and the comma, strike out the words "and also to investigate whether American exporters have combined with each other or with foreign producers or dealers to control prices abroad."

Mr. LANE. I should like to ask the Senator why he proposes to strike out that clause.

Mr. NEWLANDS. The reason for striking out that clause is because the power of investigation is given in the previous subdivision. This provision is as to the investigation of trade practices abroad.

Mr. LANE. The bill already provides for it and there is no need of it?

Mr. NEWLANDS. That is the case.

The PRESIDENT pro tempore. The amendment will be agreed to unless there is objection. The Chair hears none.

Mr. NEWLANDS. On page 22——

Mr. BRANDEGEE. I ask the Senator from Nevada if these are committee amendments?

Mr. NEWLANDS. Yes.

Mr. BRANDEGEE. Under the ruling of the Chair they have become parts of the text without the action of the Senate.

The PRESIDENT pro tempore. The Senator from Nevada will proceed.

Mr. NEWLANDS. On page 22, line 21, after the word "commerce," I move to insert the words "with the intent to prevent."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 22 in the proposed amendment of the committee, line 21, after the word "commerce" and the comma, insert the words "with the intent to prevent."

The PRESIDENT pro tempore. The amendment will be agreed to unless there is objection. The Chair hears none.

Mr. NEWLANDS. In the same line, after the word "production" I move to insert the word "thereof."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In the same line—line 21—page 22, after the word "production" insert the word "thereof."

The PRESIDENT pro tempore. The amendment will be agreed to unless there is objection. The Chair hears none.

Mr. NEWLANDS. In the same line after the word "thereof," just inserted, I move to strike out the words "of which the commission may require under this act."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In lines 21 and 22, page 22, strike out the words "of which the commission may require under this act."

The PRESIDENT pro tempore. The amendment is agreed to unless there is objection. The Chair hears none. The bill is still in Committee of the Whole and open to amendment.

Mr. CUMMINS. Mr. President, a few days ago I offered an amendment to be known as section 6, relating to a regulation prohibiting one corporation from holding or owning the stock of another, the two being engaged in like business. I debated the matter to some extent and we had a vote upon it and the amendment was rejected. I think largely because the same subject was dealt with in the bill reported by the Judiciary Committee.

It was then stated—and, I think, with a good deal of force—that whatever changes should be made in the report of the Judiciary Committee ought to be made through amendments when that bill is before the Senate for consideration. I think that all these regulations touching holding companies and interlocking directorates that are to be worked out through the commission should be in this bill; but I appreciate the difficulty and the embarrassment of accomplishing that end at this time.

I have two amendments in my hand, one touching what are known as holding companies, the other relative to interlocking directorates. I desire to offer these amendments, in their order, for I can not satisfy myself without indicating in this manner how I think this bill should be composed; but I do not intend to either argue them or to ask a roll call upon them. I accept the decision of the Senate made the other day with regard to a similar amendment relating to intercorporate stockholding as indicative of its desire to deal with those subjects in the Clayton bill. I present these amendments simply to show what I think the bill ought to contain. I offer the amendment I send to the desk as section 7.

The PRESIDENT pro tempore. The Secretary will read the amendment.

The Secretary proceeded to read the amendment.

Mr. CUMMINS. Mr. President, I will ask unanimous consent that the remainder of the amendment may not be read. It is precisely in the procedure it provides like the amendment that has been substituted for the committee amendment with regard to unfair competition. I think we could save time if we could consent that the amendment should not be further read.

The PRESIDENT pro tempore. Is there objection? The Chair hears none.

The amendment is as follows:

SEC. 7. It shall be unlawful for any corporation to acquire, own, hold, or control, either directly or indirectly, the whole or any part of the capital stock or other share capital, or any other means of control or participation in the control of two or more corporations engaged in commerce, the business of which latter corporations is naturally, and by reason of character and location, competitive.

The commission is hereby empowered and directed to forbid and prevent such unlawful conditions in commerce in the manner following, to wit:

Whenever the commission shall have reason to believe that any corporation has acquired, or is owning, holding, or controlling, either

directly or indirectly, the whole or any part of the capital stock or other share capital, or any other means of control or participation in the control of two or more corporations engaged in commerce, and that the business of the two or more corporations is naturally, and by reason of character and location, competitive, it shall issue and serve upon such corporation a complaint stating its charges in that behalf and at the same time a notice of hearing upon a day and at a place therein fixed. The corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such corporation to cease and desist from the violation of the law so charged in said complaint. If upon such hearing the commission shall find that the corporation named in the complaint has acquired, or is owning, holding, or controlling the capital stock or other share capital, or other means of control or participation in the control of two or more corporations engaged in commerce and contrary to the provisions of this section, it shall thereupon enter its findings of record and issue and serve upon the corporation an order requiring that within a reasonable time, to be stated in said order, the corporation shall bring itself into conformity with the law by ceasing to acquire, own, or control the whole or any part of the capital stock or other means of control or participation in the control of such other corporations so engaged in commerce.

The commission may at any time set aside, in whole or in part, or modify its findings or order so entered or made.

Any suit brought by any corporation to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in a district court of the United States in the judicial district wherein the corporation has its principal office or place of business, and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year of 1913, and for other purposes, relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall apply.

If within the time so fixed in the order of the commission the corporation against which the order is made shall not have complied therewith, and if in the meantime such order is not annulled, suspended, or set aside by a court, the commission may bring a suit in equity in a district court of the United States in the district wherein such corporation has its principal office or place of business to enforce its said order, and jurisdiction is hereby conferred upon said court to hear and determine any such suit and to enforce obedience thereto according to the law and rules applicable to suits in equity; all the provisions of the law relating to appeals and advancement for speedy hearing in suits brought to suspend or set aside suits brought in the Interstate Commerce Commission shall apply to suits brought under this section: *Provided*, That this section shall not apply to corporations acquiring, owning, and holding capital stock or other share capital, solely for investment, and not using same in bringing about or in attempting to bring about a common control of the corporations whose stock or other share capital it owns and holds; nor shall it apply to banks, banking institutions, or common carriers; nor shall it be construed to prevent the formation of subsidiary corporations for the actual carrying on of the immediate and lawful business of the principal corporation: *Provided further*, That no order or finding of the court or commission in the enforcement of this section shall have any force or effect, nor be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. CUMMINS. Mr. President, I now offer as section 8 an amendment relating to interlocking directorates, and ask that the same consent with regard to reading the part of the amendment relative to the procedure prescribed in the amendment be given. I ask that there be read only the substantive part of the amendment.

The PRESIDENT pro tempore. In the absence of objection, the Secretary will read as requested.

The amendment is as follows:

SEC. 8. It shall be unlawful for any person to be at the same time a member of the board of directors or other managing board, or an officer of two or more corporations, either of which is engaged in commerce, the business of which corporations is naturally and by reason of character and location competitive.

The commission is hereby empowered and directed to forbid and prevent such unlawful conditions in commerce in the manner following, to wit: Whenever the commission shall have reason to believe that any person is at the same time a member of the board of directors or other managing board, or an officer of two or more corporations, the business of which is competitive, as hereinbefore set forth, it shall issue and serve upon such person and the corporation with which he is so connected a complaint stating its charges in that behalf and at the same time a notice of hearing upon a day and at a place therein fixed. The person so complained of and the said corporation shall have the right to appear at the time and place so fixed and show cause why an order should not be issued by the commission requiring such person or persons to cease and desist from being at the same time a member of such boards or from being at the same time an officer of such corporation. If, upon such hearing, the commission shall find that any such person is a member of the boards or an officer of such corporations and that the business of said corporations is a competitive business as herein defined, it shall thereupon enter its findings of record and issue an order requiring that within a reasonable time, to be stated in said order, that such person shall bring himself into conformity with the law by ceasing to be at the same time a member of the boards or an officer of such competitive corporations.

The commission may at any time modify or set aside, in whole or in part, any order entered or made by it under this section.

In any suit brought by any such person to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in the district court of the United States in the judicial district wherein the said person resides, and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year 1913, and for other purposes, relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall apply.

If within the time so fixed in the order of the commission the person against whom it is directed fails to comply therewith, and if in the meantime such order is not annulled, suspended, or set aside by a court, the commission may bring a suit in equity in the district court of the United States in the judicial district wherein such person resides to enforce its said order; and jurisdiction is hereby conferred upon said court to hear and determine any such suit and to enforce obedience to any such order according to the law and rules applicable to suits in equity. All the provisions of the law relating to appeals and advancement for speedy hearing in suits brought to suspend or set aside an order of the Interstate Commerce Commission shall apply to suits brought under this section: *Provided*, That this section shall not apply to banks, banking institutions, or common carriers: *Provided further*, That no order or finding of the court or commission in the enforcement of this section shall have any force or effect, nor be admissible as evidence in any suit, civil or criminal, brought under the antitrust act.

Mr. CUMMINS. Mr. President, I suggest that when we reach the consideration of the Clayton bill, or that part of it dealing with intercorporate stockholding and holding companies and interlocking directorates, that I intend again to offer these amendments as substitutes for those portions of the Judiciary Committee bill; but I do not at this time ask for a roll call upon the amendment.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Iowa.

The amendment was rejected.

Mr. CLAPP. Mr. President, I send to the desk a proposed amendment to be inserted at the end of section 5. I shall not take the time of the Senate to discuss the amendment, nor shall I take the time of the Senate to ask for a yea-and-nay vote upon it. I will simply say that it is a copy of the provision contained in the Sherman antitrust law, giving an aggrieved party the right of action.

While I agree with the Senator from Iowa [Mr. CUMMINS] that the bill we are now considering, if enacted, will be a public law and should be enforced for the public, at the same time I see no reason why the party who has been injured by an unlawful act should not have a right to recover. I also believe that putting this remedy in the hands of the aggrieved party will be a very strong incentive to the observance of and obedience to the law by those against whom the law is directed as a regulating and controlling force.

Mr. CUMMINS. Mr. President, if the amendment proposed by the Senator from Minnesota is what I understand it to be, I very much hope that he will ask for a vote upon it, and I believe it will be adopted.

Mr. STONE. Let the amendment be read.

Mr. CUMMINS. I think, however—and I will make the suggestion to the Senator—that the amendment ought to be a separate section, just as it is in the antitrust law. If I have correctly understood the Senator, he now proposes to give to an aggrieved party a right of action, with the recovery of treble damages. I think such a provision ought to be a part of this bill. I do not believe anybody will oppose it; but it should be a separate section.

Mr. CLAPP. Then, Mr. President, I will offer the amendment for the purpose of the RECORD at this time as section 5½, the sections to be properly numbered when the bill is completed. Of course, I have no objection and think myself it would be well to make this amendment a separate section. The amendment reads:

SEC. —. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any district court of the United States in the district in which the defendant resides or may be found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of the suit, together with a reasonable attorney's fee.

Mr. NEWLANDS. Does the Senator from Minnesota insist upon the phrase "threefold the damages"? Does not the Senator think that actual damages incurred would be sufficient in these new cases of unfair competition?

Mr. CLAPP. Mr. President, I do not care particularly. I said at the outset that I simply copied this amendment from the antitrust law. I believe that if we are going to place the administration of this law in the hands of the commission, we can not attach to the law too many forces that will tend to its observance and its execution and administration. I believe that the possibility of a threefold recovery would be a strong factor in making men cautious in regard to the violation of the proposed law. At the same time, I have no pride of opinion in the matter, if the Senate generally thinks the damages should be reduced to twofold, or I would rather even see no multiplication of damages than not to have the amendment adopted at all.

Mr. NEWLANDS. Mr. President, I am prepared on behalf of the committee to accept the amendment.

Mr. CLAPP. If the Senator desires, however, he can submit an amendment to the amendment.

Mr. NEWLANDS. I am prepared to accept the amendment if the Senator will strike out the word "threefold." I think it

is unwise at this stage of the proceeding with reference to this form of legislation by law to inflict upon every offender threefold the damages that are actually suffered by the complainant. I should much prefer that such action should take place hereafter, as the result of the investigation and the experience and the recommendation of the commission, if they should deem it advisable. It seems to me that we ought to move along rather cautiously in the early stages of this legislation. I shall be prepared to accept the amendment if the Senator will confine it to actual damages.

Mr. CLAPP. Mr. President, it is not the sums that will be recovered, but it is the adoption of such an amendment as a factor in preventing the violation of this law, which is important. Personally I believe that the damages had better be threefold. The Senator from Nevada or any other Senator, of course, can propose to amend the amendment by making the damages twofold.

Mr. McCUMBER. Mr. President, I want to ask the Senator from Minnesota if he contemplates that this action may be brought only after the commission has determined that an act constitutes unfair competition, or can any person go into court in the first instance and test the question whether it constitutes unfair competition by an action without reference to the commission?

Mr. CLAPP. Mr. President, that is going to depend upon whether, in the last analysis, the courts are going to hold that we have delegated to this commission the legislative function of declaring what is and what is not the law. If they hold that we have, then, of course, there can be no recovery, because there is nothing forbidden until the commission has declared that a given act is in violation of the law.

Mr. McCUMBER. The Senator is mistaken. We declare in this bill that "unfair competition is unlawful," and whenever we make a public declaration that an act is unlawful, if I understand the law correctly, that of itself gives a right of action to a person who is injured by the unlawful act. Even though there was not a single word more in the statute, the right of action follows the declaration that the thing done is unlawful.

Having declared that unfair competition is unlawful, can I go into court under the amendment which the Senator offers and proceed on my own volition to bring an action against my competitor and obtain from him treble damages for an act of unfair competition of the unlawful character of which he knows nothing by any form of definition?

Mr. CLAPP. Mr. President, I repeat my answer, that if this is the delegation of legislative authority, then, while we say that unfair competition is unlawful, it remains for the commission to declare what is unfair competition. If, on the other hand, this bill can be construed as a declaration by Congress, for instance, that local underselling, with all the accessories, which I will not enumerate, is unfair competition without any declaration of the commission, then, of course, a party injured by local underselling, in the terminology that would be involved in the technical description of that act, can proceed to seek recovery.

If the Senator from North Dakota is correct, that we have defined and declared by our act that local underselling is an offense, then the man who engages in local underselling knows that he is committing an offense, because he knows he is violating the statute. I undertake to say that no man living knows whether we have declared that practice an offense or whether we have not. It will have to be determined by the courts whether we have delegated that authority to the commission or whether Congress, by its own declaration that unfair competition is unlawful, has made underselling a prohibited transaction.

Mr. McCUMBER. Then, Mr. President, if no man on earth can know whether he is disobeying the law or not until some time in the future, when some commission finds out and tells him that he is disobeying the law, does not the Senator think that mulcting him in treble damages is a little bit harsh?

Mr. CLAPP. No; because he can not be mulcted in treble damages until the commission has declared the particular act unlawful.

Mr. McCUMBER. Not according to the Senator's amendment. His amendment does not provide that after the commission has determined that a certain act is unlawful, then any person injured by a continuance of that act may have treble damages.

Mr. CLAPP. But my amendment provides that any person who shall suffer by reason of any act forbidden or made unlawful by this act may sue and recover treble damages.

I repeat—and I can not make it any plainer—that if it remains for the commission first to say whether local underselling—and I use that as a familiar illustration—is forbidden, then local underselling is not forbidden until the commission has so declared; and the same thing would apply to any other practice. It is in analogy with the antitrust law. There is no suggestion in the provision relating to the recovery of damages in the Sherman Act that such damages may be recovered after an act has been declared illegal. I have copied verbatim the language found in the Sherman antitrust law, and I leave the matter there.

Mr. McCUMBER. Well, Mr. President, the jumble in which we find ourselves plunged in this legislation all comes from the fact that we do not dare to define what we mean by "unfair competition." Now it is proposed to punish an individual for an offense when no one will dare to say what that offense is or will attempt to define it. It is proposed to subject him to a suit for treble damages if at some time in the future five men to whom Congress has given the legislative authority—which it has no right to give—determine that an act he has committed constitutes the offense. If we are granting any authority at all in the matter of determining what that offense is, it must be legislative authority pure and simple. No standard is fixed, and certainly the mere broad assertion of unfairness does not furnish a standard under which a man ought to be punished.

Mr. CLAPP. Mr. President, I confess there is some force in the suggestion of legislative chaos, not due, however, in my judgment, to any cowardice in the matter of furnishing definitions, but because we have not the courage to assert our independence as a legislative body and take our own time in calm deliberation in the preparation of important legislation. That is why we find ourselves confronted with these apparent inconsistencies.

But for myself—and I am only speaking now for myself—I do not believe, under this bill, if it passes in its present form, that any crime is committed until the commission declares a specific act is within the prohibition of the law.

Mr. McCUMBER. Is not that legislative authority?

Mr. CLAPP. Unquestionably.

Mr. McCUMBER Can we grant such authority?

Mr. CLAPP. Ten years ago, even five years ago, not a Member of this body could have been brought to contemplate the vesting of such authority in a board or a commission, but we have progressed; the courts have advanced along this line, and I am inclined to think—I am quite certain, or as certain as a man can be in such a matter—that when this bill reaches the courts the courts will hold that we have not exceeded our authority in delegating this power to the commission.

In the bill providing for the opening of the Panama Canal we used quite as broad language as this. We provided that certain restrictions were to be suspended so long as the Interstate Commerce Commission felt that the suspension of those limitations was for the public good and did not materially interfere with competition.

Mr. McCUMBER. So far, Mr. President, there has been no declaration in the bill the effect of which would punish the individual until this commission itself has determined what the offense is and whether the offense has been committed.

Mr. CLAPP. Clearly the amendment does not do that.

Mr. McCUMBER. And after that nothing can be done except to enjoin the individual from committing offenses of like character; but now it is proposed to go a step further. If this amendment is incorporated in the bill, you immediately provide for the punishment of an offense of which the offender can know nothing, at least until some quasi legislative body has passed judgment upon the question whether or not he has a right to do a particular thing.

I think the Senator from Minnesota entirely agrees with me that if two competitors are seeking business and one of them advertises in glowing terms or makes claims for his goods that are not founded upon exact facts, he is undoubtedly guilty of some kind or in some degree of unfair competition; and yet I do not believe that the Senator from Minnesota would include that within the terms of this bill as unfair competition, over which the proposed trade commission would be given jurisdiction. I confess I think they probably would have jurisdiction over it unless the term "unfair competition" is defined.

If the one great object to be sought is the prevention of competition by unfair methods, then I can see no reason on earth why a definition can not be formulated which will bring the acts prohibited clearly within the understanding of all, so that the Senator from Minnesota or I or any other person in business would be able to know beforehand whether our actions were in the end calculated to destroy competition and whether we were guilty of a wrong.

I say that the very argument which the Senator is making in behalf of the right of the aggrieved party to recover treble damages emphasizes the necessity for a definition that will

make clear to business men exactly what the law means. I believe I have as comprehensive an idea of what constitutes "unfairness" as have average business men, and yet I confess I do not know what the term "unfair competition" means; and, inasmuch as there are no two Senators who agree as to what that expression does mean, there can not be more than 1 out of the 96 of us who is correct. If that be true, it does seem to me, in all candor, that we ought not to impose such a law upon the public without providing any definition or any guide to recommend itself to their judgment. To follow the broad provision in regard to "unfair competition" with an enactment proposing to inflict treble damages upon the person who is guilty of it appears to me to be going very far. I agree with the Senator that it is all right to fix a penalty of treble damages, provided you will let the person know beforehand what the offense is which renders him liable to such damages.

Mr. CLAPP. Mr. President, I would have no quarrel with the Senator from North Dakota if he were to attempt to define those acts which would be included within the expression "unfair competition."

Personally, I think it is a very plain designation, as plain as "restraint of trade" or "reasonable rate." At the same time, believing, as I always have, in making laws just as plain as they can be framed, I should be glad to see this law framed in a way that would place it beyond any question.

One thing is certain, however, we are not going to be able to do that. This bill is going to pass substantially in its present form. I have an amendment pending which first prohibits unfair competition and then leaves it directly to the courts, without the intervention of any commission, but I know that the amendment has no more chance of being adopted than an ordinary snowball in the realm of torture would have of developing into an avalanche. [Laughter.]

Mr. McCUMBER. Mr. President, does not the Senator believe that when we declare that unfair competition is unlawful, and follow that up with a declaration that any person who is injured by that unfair competition may proceed in court to collect from the person injuring him treble damages, he can go immediately into court under that provision, without waiting until some commission has determined it?

If "unfair competition" is a sufficient definition so that the court itself can say that it has a general meaning in the law which the public understands, then it seems to me the Senator must agree with me that the right would follow to go into court immediately, under his amendment, to secure his rights, and that the question as to whether or not there has been unfair competition can be tested in that way.

Mr. CLAPP. Mr. President, my amendment does not change the law itself or the terms of the bill as now framed. Either from the moment this bill is signed local underselling, for instance, becomes a forbidden act, or it does not become forbidden until the commission forbids it. I simply take the law as I find it, and give to this proposed amendment of mine the same relation to the law which everything else sustains to it. If those engaged in business can not tell until the commission has told them what is an offense, then no action can be sustained here until the commission has told them. If, on the other hand, they are bound by the terms of this law, then, knowing this to be the law, and under the rule that men must know the law, they will have no difficulty in avoiding violations of the law. My amendment is not designed so much as a penalty, so much as a recovery, as it is that, standing there, it may be a factor in deterring men from violating the law.

So far as the definition is concerned, as I said before, I should be glad to see "unfair competition" more plainly defined, if it can be. So far as the right of recovery is concerned, while I have taken it as threefold from the Sherman antitrust law, and shall submit it as threefold, of course it is in the power of the Senate to modify that as it sees fit.

Mr. BRANDEGEE obtained the floor.

The PRESIDENT pro tempore. Let the amendment be reported to the Senate.

Mr. BRANDEGEE. I have it here, and was just about to read it.

The PRESIDENT pro tempore. Let the Secretary read it.

Mr. BRANDEGEE. I shall be very glad to have that done.

The SECRETARY. It is proposed to add in the bill a new section, to be known as section 6, and subsequent sections to be numbered:

SEC. 6. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any district court of the United States in the district in which the defendant resides or may be found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of the suit, together with a reasonable attorney's fee.

Mr. BRANDEGEE. Mr. President, it appears, from the proposed amendment, that—

Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in the district court of the United States—

And recover treble damages.

The language is—

Who shall be injured * * * by * * * anything forbidden or declared to be unlawful by this act.

Section 5 of the act says:

Unfair competition in commerce is hereby declared unlawful.

So, if this amendment is adopted, clearly any person who is injured by unfair competition in commerce may go to the court, independently of any commission, and recover treble damages.

The fact that the act provides, in section 5, that whenever the commission shall have reason to believe that any corporation or person—now that the Cummins amendment has been agreed to—is guilty of unfair competition, the commission shall order it to cease, is not an exclusive remedy. This would clearly give an independent remedy to any person against any other person or corporation who has committed any act of unfair competition.

Of course, as has been repeatedly pointed out here, there is at present something that the courts issue injunctions against as unfair competition, and in equity I suppose they would compensate the man who has been injured by it; but I assume that at present, under existing law, the compensation is not treble. If this amendment is adopted it would, in my judgment, give treble damages as compensation to anybody against whom the courts shall say an act of unfair competition has been committed, and who has been injured thereby.

Mr. CLAPP. Mr. President, as I said before, this amendment is not original with me. I copied it out of the Sherman antitrust law, and precisely the same provision is in the Clayton bill, I think, as reported.

Mr. BRANDEGEE. I am not claiming that it is original with the Senator, Mr. President. I understand that it is taken from the Sherman law and that it was intended to give that remedy to a party who had been injured by a restraint of trade or an attempt to monopolize under that statute. My object here is simply to point out, in answer to the inquiry of the Senator from North Dakota [Mr. McCUMBER], that no judgment of the commission would be necessary for the individual to go right into court, as a personal right conferred by this amendment, and conduct his own litigation and get the judgment of the court. There would, of course, arise at once, as a judicial question—where, in my opinion, it should be determined—whether "unfair competition," as used in this statute, means anything other than the unfair competition which is now prohibited by courts of equity upon application.

There is one suggestion which, while I am on the floor, I will offer for what it may be worth. The Senator from Nevada [Mr. NEWLANDS] has expressed repeatedly during the discussion of this matter his confidence that the parties who are prohibited by the commission from continuing in the methods which the commission might think were unfair would submit to the commission's decree and that there would be very few appeals. If this amendment is adopted it will compel every corporation, at least, whose practices have been so extensive as to injure a large number of people, to fight to the death every order that the commission may make. They will have to appeal every case, even if they are willing to abandon the practice when it is called to their attention, and go to a court to have it reversed, and use every means in their power to have it reversed, or else they will be liable in threefold damages to everybody in the country that they may have injured. It would do more than anything else to absolutely neutralize any beneficial result that the Senator from Nevada and the other friends of the bill think will flow from it.

Mr. NEWLANDS. Mr. President, I am opposed to this amendment. I do not believe in the principle of assessing threefold damages. If we are to apply it to unfair competition, why should we not apply it to all cases of tort? Why should we not declare by law that in every case of tort where injury is done and damage is proved the judgment should be entered up for three times the amount? Why should we not in every action for deceit, every action for fraud, every action for personal injury, provide by law that a judgment shall be entered up for three times the damages actually sustained?

Mr. CLAPP. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Nevada yield to the Senator from Minnesota?

Mr. NEWLANDS. Certainly.

Mr. CLAPP. The Senator, of course, is aware that in a great many States, for malicious trespass, willful trespass, there follows recovery of three times the amount of the injury. More than that, this is a public offense; and a penalty may well attach as it would attach to any other public offense.

Mr. NEWLANDS. Mr. President, I do not believe that practice is a general practice, and whether it be or not I do not believe it is to be extended. Certain penalties can be properly attached in a case, such as infliction of the expenses of the suit, the attorney's fee, and so forth; but when it comes to assessing three times the actual damages suffered, it outrages every man's sense of justice.

We are entering now upon a new field of inquiry as to what constitutes unfair competition. This commission, and ultimately the courts, will be called upon to make nice distinctions with reference to this matter for the purpose of determining what set of facts and circumstances constitute unfair competition. Here we hold this sword of Damocles above every business man in the country, and either compel him to abandon a practice which perhaps he thinks is right, or to pursue litigation to the bitter end, when we want through this instrumentality not to punish, but to secure higher standards of conduct, by rules that will be laid down by this commission and sustained by the court, and which will have an educational effect upon the commerce of the country.

There is another reason why I am opposed to such amendments as this. I am opposed to loading down this bill. The country now is in an embarrassed industrial condition, accentuated by conditions that are world-wide. I would not add a single ounce to the weight the business men throughout the country are carrying now. I do not want to see this bill accepted by the business community as carrying terror and destruction. I hope they will feel, as I feel, that it will be an instrumentality of beneficence.

It was for that reason that we confined the operation of the unfair-competition clause, so far as the powers of this commission were concerned, to corporations, and exempted associations of individuals, simply because we realized that the practices that are complained of are largely the practices of consolidated wealth in the shape of corporations; that it was the war of the giants against the pygmies with reference to practices that were prejudicial to good business morals, and since we realized that any movement of this kind would have some disturbing effect upon the business of the country we wanted to confine it to as small an area as possible. We knew that the effect of this legislation would be exaggerated, and that every effort would be made to impress the average business man of the country with the idea that this law meant inconvenience and distress and disturbance to him. Realizing that the average business man of the country is an honest man, and that few of the dangers of unfair competition come from individuals and firms that are engaged in business, and that almost all of them come from corporate organizations, we determined to apply the powers of this act only to corporations, less than 300,000 in all, of which probably not one-third are engaged in interstate commerce, instead of extending it so as to embrace millions of business men who would suffer under exaggerated apprehension regarding the effect of this bill upon their business.

For this reason I oppose any enlargement of the scope of the bill. It is true that we have recently adopted an amendment extending the operations of section 5 to firms, associations, and individuals, and beyond the corporations. I regret that that amendment has been adopted. I hope it will be corrected in the Senate. I want to see this bill confined, as far as possible, to the area of actual business degeneracy.

Mr. President, I hope the friends of this bill will not permit it to be loaded down. This whole matter will go through an evolutionary process, just as the control of railroads went through an evolutionary process. I think it probably would have been a great mistake to have given the railroad commission at the very start the large powers which it now enjoys. I very much fear it would have exercised them unwisely, or in such a way as probably to have resulted in the speedy repeal of the act. I have seen many bills, whose authors were animated by the highest spirit of reform, repealed because of too aggressive enforcement of the reform sought to be obtained. I believe this commission should go through the same evolutionary process and gradual advance that the Interstate Commerce Commission has gone through, and that it will be better for the commission and better for the business of the country if we do not enlarge too extensively the area of its operations or make its powers too severe.

Mr. CLAPP. Mr. President, after several weeks of discussion and committee activity we now reach the point where it is suggested that we shall play fast and loose with conditions that the administration, those out of the administration, and the country generally, have recognized call for some remedy.

One of two things is absolutely certain: Either there are men and corporations in this country engaged in unfair competition which should be forbidden and prevented, or else there are not; one or the other.

To pass a law against unfair competition is no more to brand everybody as prone to unfair competition than, in the creation of a new State, the passage of a law against murder would be branding all the inhabitants of the State as murderers. This law simply reaches those who are prone to violate it. It simply reaches those who, if unrestrained, will continue unfair competition. There is no halfway ground upon that proposition.

It is about time to explode this idea that we can bring in these trust magnates and convert them to industrial and commercial altruism. Either we should legislate against that spirit and that course or we ought to stop this agitation and this debate.

The existence of the Sherman antitrust law, the presence in this Chamber of the Clayton bill, the incoming of the bill to regulate the issue of securities, the presence of this bill in the Senate, all stand as evidence that in public opinion and in the judgment of this body there is a spirit in this country that should be regulated and controlled; and there is no way to regulate and control that force so effectively as not to hang a sword above these people, but to stand at the gateway of commercial integrity with a flaming sword, that they may be deterred from violating the law in its letter and in its spirit.

If it is worth while to legislate against any individual or corporation, if they actually need restraining, then we should bring to our aid everything that will make that attempted restraint effective and of some force and some value. This law does not affect the man who is not violating it. This law is no threat hanging over the head of the honest business man who does not want to resort to unfair practices to crush out his smaller and weaker competitor; and the same reason exists for a penalty here to deter violation of the law that exists for passing the law prohibiting these things that are sought to be prohibited.

If it is thought that the penalty is too severe, as I said before, that is a matter for the Senate to deal with. In case the Senate is in favor of the amendment at all, it can deal with it by an amendment to the amendment.

When I offered this amendment I had not thought, and at that time disclaimed a purpose, to call for the yeas and nays; but in view of the trend which this discussion has taken I shall ask for the yeas and nays upon this amendment.

Mr. WALSH. Mr. President, I fear the Senator from Minnesota, who has offered this amendment, coming as it does from the antitrust act, has overlooked the very important fact that the organization of a conspiracy or combination in restraint of trade or the establishment of a monopoly denounced by the Sherman antitrust law is made criminal, and heavy penalties are imposed by the act upon anyone who shall be guilty of a violation of it. It is quite consistent with legislation with which we are all familiar to give double or treble damages to anyone suffering injuries by reason of an act denounced by the statute as criminal.

The Senator has referred to the case of malicious mischief. That is a very familiar one. That is to say, when one destroys the property of another out of malice, he is ordinarily subjected to a criminal prosecution; and, if it is established, this is imposed by way of a penalty. It is a further penalty imposed upon the defendant who commits a crime. Likewise, there are other circumstances and conditions where the law frequently imposes double or treble damages. They all embrace a case that is ordinarily denounced by the statute as criminal or one that is declared to involve a high degree of moral turpitude. It is of the same character as punitive or exemplary damages.

Mr. President, for some reason or other, the nature of which it is not necessary now to canvass, we have deemed it not the part of wisdom to denounce unfair competition as criminal, to subject the person against whom the charge may be made to prosecution as for crime. Several reasons have been urged. In the first place, it has been suggested, and very properly suggested, that, try as anyone may, we can all understand a large group of practices which all of us would say will fall under the condemnation of this act; and yet, beyond those, many will arise concerning which opinions will vary and differ as to whether they do or do not fall within the condemnation of the act. There a man is subjected to a severe burden by this provision.

Mr. President, I dare say the Senator will agree with the rule laid down by the Senator from Tennessee [Mr. SHIELDS] on yesterday. No one can question its soundness. The law having denounced unfair competition as unlawful, anyone who suffers damage by reason of the doing of an unlawful act has a right of action. He has a right of action without any express declaration in the statute. Not only has he a right of action, but he has a right of action which he may prosecute in any court, State or National.

I think it is very questionable whether this right of action for damages, no matter how inconsequential or trifling it may be, should be given to the Federal courts. I think it exceedingly unwise to throw into that court the possibility of the trial of an action involving little claims of $100 or $200.

For that reason, Mr. President, I think that that provision is particularly objectionable, and I do not think triple damages ought to be imposed so long as we have not deemed it wise to denounce these acts as criminal. If we leave the damages to be recovered only to those actually suffered, you are not doing anything at all by the incorporation of this section in the law, and, accordingly, it ought not to be adopted.

The PRESIDENT pro tempore. The question is on the adoption of the amendment proposed by the Senator from Minnesota [Mr. CLAPP].

Mr. CLAPP. On that I call for the yeas and nays.

Mr. MYERS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Montana suggests the absence of a quorum. Let the Secretary call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Hitchcock	Nelson	Smith, Ariz.
Brady	Hollis	Newlands	Smith, Ga.
Brandegee	Hughes	Norris	Smoot
Bristow	James	Overman	Stone
Bryan	Johnson	Owen	Sutherland
Chamberlain	Jones	Page	Thomas
Chilton	Kenyon	Perkins	Thornton
Clapp	Kern	Pittman	Vardaman
Clark, Wyo.	Lane	Pomerene	Walsh
Clarke, Ark.	Lea, Tenn.	Ransdell	Weeks
Crawford	Lee, Md.	Reed	West
Culberson	Lewis	Shafroth	White
Cummins	McCumber	Sheppard	Williams
Gallinger	Martine, N. J.	Shively	
Gronna	Myers	Simmons	

Mr. KERN. I desire to announce the unavoidable absence of the senior Senator from South Carolina [Mr. TILLMAN]. He is paired with the Senator from West Virginia [Mr. GOFF]. This announcement should have been made earlier. It will stand for the balance of the day.

The PRESIDENT pro tempore. Fifty-eight Senators have answered to their names. A quorum of the Senate is present.

Mr. McCUMBER. I move to amend the amendment of the Senator from Minnesota by striking out the word "threefold."

Mr. CLAPP. That simply would be, of course, to eliminate the amendment, because undoubtedly a suit for the actual dam ages could be recovered without any direct authorization. I hope the amendment to the amendment will not be adopted.

Mr. JONES. I make the point of order that the amendment of the Senator from North Dakota is an amendment in the third degree, the amendment of the Senator from Minnesota being an amendment to the committee amendment.

The PRESIDENT pro tempore. Under the ruling made heretofore that is not the case. The point of order is not well taken.

Mr. McCUMBER. Before voting upon the question I will state to the Senator from Minnesota that if the bill itself would define an offense that the average man could understand I would favor the amendment of the Senator from Minnesota fixing a threefold punishment for a disobedience of the law, but inasmuch as up to this time there is no definition of the words "unfair competition" which any Senator understands or which anyone else can be supposed to understand at the present time, I should vote against punishing a man for committing an offense which he does not understand.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from North Dakota to the amendment of the Senator from Minnesota [Mr. CLAPP].

Mr. GRONNA. May I ask to have the amendment read?

The PRESIDENT pro tempore. The Secretary will read the amendment and the amendment to the amendment.

The SECRETARY. It is proposed to insert as section 6 the following:

SEC. 6. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any district court of the United States in the district in which the defendant resides or may be found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of the suit, together with a reasonable attorney's fee.

It is now proposed to strike out the word "threefold" where it appears, so that it will read:

And shall recover the damages by him sustained and the costs of the suit, together with a reasonable attorney's fee.

Mr. REED. Mr. President, the Sherman Act contains this clause. The bill which is now being considered, if it means anything, if it means what its authors think it means, will embrace a very large number of acts which are now covered by the Sherman Antitrust Acts. If you place in this bill a clause similar to that contained in the antitrust acts and a suit is brought by a citizen for damages there can be no question as to the rule of damages; whether it is held that his action is based upon the antitrust acts as they now exist or whether based upon this act the measure of damages will be the same. But if you strike out the clause "threefold damages," it is easy to imagine a case brought by a citizen where it will be a matter of doubt whether the act complained of comes under the rule of damages as expressed in this bill, or whether it will come under the rule of damages as expressed in the Sherman Antitrust Acts. For that reason I think the amendment offered by the Senator from Minnesota ought not to be emasculated.

Mr. President, I have for the last two or three years been impressed with the thought that the real enforcement of the antitrust laws of this country would ultimately be found in the fact that the citizen injured will begin to insist upon his rights in the court and enforce the damages clauses of that act. In a number of instances suits of that kind have been brought, and whenever the way is clearly marked out and the road is made easy by virtue of certain provisions that have been written in the Clayton bill which is soon to come before the Senate, and I refer especially to those provisions which specify that when a matter has been once adjudicated the judgment can be used as evidence in suits by parties who were not named in the action; whenever we arrive at that condition where the enforcement of the remedy for the injury of the citizen is made easy, it is my opinion that there will be found great force and vitality in the antitrust acts. So I think the most valuable provision there is to-day in the antitrust acts of this country is that provision which gives the citizen the opportunity to sue and recover threefold damages.

Mr. President, why should not that apply to this bill? If we can judge what this bill is intended to cover by the statements of its authors and the members of the committee it is in every instance intended to reach unfair, dishonest, crooked, oppressive, coercive acts. It is not intended to cover mere mistakes. It is intended to reach acts which are in their nature tortious and wicked and wrong, not to say villainous.

Mr. CHILTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from West Virginia?

Mr. REED. Let me finish this sentence.

The PRESIDENT pro tempore. The Senator from Missouri declines to yield.

Mr. REED. I will yield in a moment.

Why, then, should we deal gently with that kind of practice? Why should we not allow threefold damages as we do under the antitrust acts?

I yield to the Senator from West Virginia.

Mr. CHILTON. I wanted to ask the Senator if he recalls that this is identical with section 5 of the Clayton bill, which has been reported to the Senate, and does he not think that it would be more nearly in its right place in the Clayton bill than here? This is identical with section 5 of the Clayton bill as passed by the House and which section was reported to the Senate without amendment by the Judiciary Committee.

Mr. REED. But I do not think that clause of the Clayton bill is so drawn that it will cover the matters coming within the purview of this bill.

Mr. CHILTON. It reads this way:

SEC. 5. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

That is section 5 of the Clayton bill that has been passed by the House and has been reported to the Senate without any amendment by the Judiciary Committee.

Mr. CLAPP. That would not cover accidents under this bill by any means. It has not and never will be called one of the antitrust laws. This is an interstate trade commission bill.

Mr. CHILTON. I beg the Senator's pardon. I think by the definitions it is an antitrust law.

Mr. CLAPP. It is not aimed at trusts. It is aimed at a practice that has grown up outside of the trust combination practices, and that is why it is necessary to prohibit unfair competition in addition to the antitrust legislation of the country. There is no quesion about that.

Mr. CUMMINS. Mr. President, if the Senator from Missouri will yield, the point suggested by the Senator from West Virginia is settled, I think, in this way: The first section of the Clayton bill defines what are called antitrust laws. That definition includes the antitrust act of 1890, the similar provisions in the two tariff laws, and the law, if it becomes one, embraced in the Clayton bill, but it does not embrace the act which we are now considering, but, if I may be permitted to say so at this time, I think that a section exactly like the one in the Clayton bill ought to be put in this bill if the amendment of the Senator from Minnesota is adopted, so that an order of the court under section 5 will become prima facie evidence in favor of a person who sues for damages under section 5, and I have no doubt that will follow.

Mr. REED. Mr. President, I was about to make a statement similar to that which has been made. When we turn to the Clayton bill, which has not yet been passed, but which, I hope, will in some form become a law, we find the first section defines antitrust laws. It reads:

> That "antitrust laws," as used herein, includes the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; sections 73 to 77, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," of August 27, 1894; an act entitled "An act to amend sections 73 and 76 of the act of August 27, 1894, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also this act.

That will embrace all of the antitrust statutes now upon the books, and if adopted will embrace the Clayton act, but it has no words incorporating into that definition or description the so-called trade commission act.

When we come to the trade commission act we find that the term "antitrust acts" is defined substantially as it is defined in the act I have just read. I hardly think it worth while to read it, because there can be no dispute.

Mr. CHILTON. I want to say to the Senator that, after looking at it, I believe he is right.

Mr. REED. Mr. President, that brings us squarely down to the question of whether this amendment ought to be adopted, and, if so, whether we ought to eliminate the threefold damage clause and provide simply for ordinary damages. I was observing, when I was interrupted, that I believed we will within a few years learn that the antitrust acts in this country find their most potential enforcement through the suits of private parties. If you can ever establish a system by which it is easy for the private individual to prove his case, a system that does not require him to expend months of time and labor to prove matters that have already been once proven in court and solemnly adjudicated, the number of those suits will be such that men will find there is no profit to be made in organizing trusts and monopolies, because after they have organized them, and after they shall have "plucked" the public, they will be liable to lose all they have made, and, in addition to that, be mulcted in damages. That seems to me to be the most hopeful solution the future holds.

Now, we are enacting new legislation here. We are declaring that we intend to do something that will strike a death blow to monopoly; we propose to arrest its progress in its infancy. We are dealing not with honest mistakes of judgment, but with acts which are in their nature malicious, with the same class of conspiracies exactly as the Sherman Antitrust Act deals with, except that we propose to strike those acts in their incipiency instead of after they have been actually worked out into a complete system of monopoly or restraint of trade.

Therefore, I am in favor of passing this amendment and of passing it as it is written, not of emasculating it. I have no tenderness in my heart for those people who start out deliberately to monopolize trade or to embark upon a scheme of destroying competition; who proceed not by honest and fair means, but by oppressive and dishonest and fraudulent methods.

Moreover, there is a reason for giving threefold damages. In many instances the damage which can be proven is small in dollars and cents; not sufficient to warrant a suit, because the net has been so spread that it does not take much from one individual, but takes a vast aggregate from all of the people. So, I think that, in order to make it worth while to sue, we ought to do as was done by the wise men who wrote the Sherman Antitrust Act. We should follow their same example and adopt the rule of damages which they laid down.

Mr. WILLIAMS. Mr. President, I rise for the purpose of asking the Senator from Minnesota a question. I do not know that I understand precisely the object of his amendment. This proposed act declares that unfair competition is unlawful, and the amendment proposes that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act" may sue and recover threefold damages.

Does that mean that that suit may begin after the commission has declared a given method to be an unfair method of competition, or is the man to be punished for having employed a method which, in any opinion of the commission, may be pronounced and declared to be unfair? It looks to me as if this provision might be retroactive in a rather oppressive manner. If the commission, for example, were to decide soon after it was organized, or at any time, that the practice of some corporations in making a purchaser from them agree not to sell the goods which they sell to him for less than a certain price was unfair competition, as I think it would decide, then could that man be punished for the act to which that decision was applicable which he had performed before the commission had rendered its decision?

Mr. CLAPP. Mr. President, in answer to the Senator's inquiry I can only say what I have said in answer to the same inquiry by others. The same question would probably arise under the Sherman antitrust law, where the same provision is found, or it might arise possibly under the Clayton bill, where the same provision is also found. Congress declares that unfair competition is unlawful and forbids it, but I believe that the courts will finally hold that no act is a violation of this proposed law until the commission has made its declaration to that effect. Take the case that I used in the former discussion here this afternoon of what is called "local underselling" for the purpose of destroying competition, transportation accounted for, and all that.

If this law of its own force makes local underselling an offense, then, of course, it does not depend upon the subsequent decision of the commission, and any man engaged in local underselling—with the technical terminology which would make the offense complete, of course—does it at his peril and should take the responsibility of his act. On the other hand, as I am inclined to view this proposed law, local underselling is not made an offense per se by the law, although it will be made so in the Clayton bill if it goes through in its present form; but, eliminating the Clayton bill, then, while we have made unfair competition unlawful, we have not per se made local underselling unlawful until the commission declares that it is one of the practices prohibited by this act, just as the Congress declares that a rate must be reasonable. A rate can not be said to be reasonable as a matter of law, even in the initiative, until the Interstate Commerce Commission has so declared.

This amendment simply shares the fate of all the provisions of this bill. Men must construe this proposed law; they must be bound by it, and I do not think men engaged in the subterranean methods of crushing competition will themselves have any difficulty about knowing whether they are engaged in unfair competition.

Mr. WILLIAMS. Mr. President, the Clayton bill pronounces, for example, that local underselling, with the intent of stifling and destroying competition, is punishable in a certain way——

Mr. CLAPP. Yes.

Mr. WILLIAMS. According to that bill; but you can not punish anybody for local underselling under the provisions of the Clayton bill until after that becomes by pronouncement of the Clayton bill a penalized offense. Therefore you can not punish anybody for local underselling when the local underselling had taken place prior to the time at which Congress pronounced underselling to be a penalized offense.

Mr. CLAPP. No.

Mr. WILLIAMS. Now, if the Senator will pardon me for just a moment——

Mr. CLAPP. Certainly.

Mr. WILLIAMS. There has been a great deal said about the definition of "unfair competition," and it seems to me that much has been said unnecessarily. There are a whole lot of things in this world that are indefinable which are yet not inapplicable. I could not define in a satisfactory way what a fraudulent device is; I could not satisfactorily define what the getting of money under a fraudulent pretense is, nor even fraud itself; but I could give anybody a great many instances of acts that would be included within either of those phrases.

Mr. CLAPP. Mr. President, as a rule the Senator would have very little difficulty in advising a client whether a contemplated act was or was not one of those offenses.

Mr. WILLIAMS. Oh, I would probably have very little difficulty as to that, although sometimes I might conclude that some act was or was not an offense, and the court might hold otherwise; that has frequently happened with some better lawyers than I am.

Unfair methods of stifling competition is what is meant by this bill or what is sought to be intended by the phrase "unfair competition." Before the Commerce Committee of the Senate I cited a great many such methods; and I want to put some of them in the RECORD to-day, so that, although man after man has been challenged to define the phrase "unfair competition," and has failed to do so, the country may understand, or that small part of the country that reads the CONGRESSIONAL RECORD may understand, that while the expression is not capable of an abstract definition, it is capable of concrete application all the way through. For example, the Sugar Trust has held its power over trade very largely by prescribing that its customers shall sell sugar at a price to be dictated by it from week to week and from day to day. I think that is an unfair method of stifling competition.

Again, many great concerns in this country sell goods to merchants at a certain price, upon the condition that they shall export those goods and shall not sell them in the United States, nor give American citizens the benefit of the price at which they were bought. That, I hope, this commission will decide to be an unfair practice. It is certainly an unpatriotic one.

Many others of the so-called trusts keep their throat-hold upon American industry by prescribing that their customers shall not sell outside of a certain territory; some of them, that they shall not buy outside of a certain territory; some others, that their customers shall not buy from others engaged in producing competing articles. Others have gone so far as to sell upon the condition that their customers shall not sell even within the United States below a retail price to be fixed by them.

Since these instances were originally given, the Supreme Court has decided that under existing law that practice is unlawful in a case which went up from Memphis, Tenn.

Another example, familiar to most of us, is to be found in the great shoe industry of this country, which is to-day shackled by the fact that the United States Shoe Manufacturing Machinery Co. will not sell them at all certain machinery for bottoming shoes, a device which, because of its great value, has become absolutely necessary to the shoe industry, or even lease that machine to them unless the shoe factory leasing it agrees to buy a whole lot of other machinery from the same company and not to buy machinery like it from competing companies. That, again, strikes me as one of the things that constitute unfair competition.

In clause 3 of section 1 of a bill which I have introduced here it was intended to meet all of these evils, as far as I could draw upon my imagination for them.

The Clayton bill meets most of them. Most of the very practices that constitute unfair competition are substantially declared by the Clayton bill to be penalized.

The difference, however, between this amendment with regard to the retroactive feature and the other bills is this: We adopted an amendment this morning by means of which some of the court rights of a man were cut off, and it was done because it was stated that by analogy with the interstate commerce law it ought to be done; and my friend, the Senator from Arkansas [Mr. CLARKE], made a very eloquent and a very profound legal argument, but during his legal argument he forgot one distinction which was very clearly made by the Senator from Montana [Mr. WALSH] the other day, and that was that the action of the Interstate Commerce Commission applies only to the future, while this bill declares unlawful acts that have been committed in the past. If men are to suffer a threefold damage before the commission has defined an act to be one of the acts which involve unfair competition, then the argument made by the Senator from Missouri has a great deal of force in it.

I am glad to say that I was one of the men at the other end of this building who had a great deal to do with the enactment of the so-called Hepburn bill. We sent it from that end of the Capitol as if it came from a catapult, with a united, unanimous vote, to the doors of this Chamber; and that had much to do with its passing here. When in connection with that legislation we discussed the jurisdiction of the courts upon review, and confined and limited it, we did so because in that case the commission did nothing except to say, "Hereafter this rate shall not be charged; and hereafter, if this rate is charged it shall be punishable; and hereafter if the rate which we prescribe as reasonable is varied from such action, will be punishable." This bill does not do that; this bill refers to the past.

Mr. REED. Mr. President, I do not understand this bill exactly as does the Senator. I do not understand that the trade commission will have any jurisdiction over any act or that this bill will cover any act except such an one as shall have been committed after the bill has been passed. I do not know of any retroactive clause in it.

Mr. WILLIAMS. I beg the Senator's pardon. Of course, upon that question there can not be any dispute between him and me, or between any two sensible men. No act could do that if it wanted to. It can not make anybody punishable ex post facto. What I am talking about, however, is not that this act goes back beyond its passage, but that a thing which is for the first time defined by the commission to be unfair competition, and therefore for the first time defined to be unlawful, is punishable before the commission so pronounces it.

Mr. REED. Do I understand the Senator, then, to mean that the act itself is so vague, indefinite, and uncertain that it gives no notice to any man as to the things coming within its domain?

Mr. WILLIAMS. No; I hope the Senator does not so understand me.

Mr. REED. If it does give a notice, then they ought to be punished. If it does not give a notice, it ought not to be passed.

Mr. WILLIAMS. Mr. President, I do not care about being kept on my feet. I did not rise for the purpose of making a speech at all. Of course, I do not take the position that the phrase "unfair competition" is so vague that it gives no notice, but I do say, and every man must know, that it does not give specific notice with the accuracy of an indictment. It is very possible that many things that are done all over the business world now, and that most business men regard as fair and lawful, may be held by this commission to be unfair and unlawful.

Take the case of the man who carried that case up from Memphis, who had bought certain goods from wholesalers who sold only on condition that he should sell at a certain retail price, and who said: "Why, I can make money selling below that retail price; I have bought these goods; they are my property, and after you have parted with them I do not care what contract you made me make in order to buy them; they are my property." When the Supreme Court held that the contract which the wholesalers had made with him, attempting to force him to sell at a certain price, was contrary to public policy and nullified it, and upheld the man in selling at whatever price he chose, there was an illustration of a practice that was quite prevalent, which the majority of the business men of this country thought was lawful and fair; and yet the Supreme Court pronounced it, even without this law, unlawful and unfair.

It strikes me that if the Senator would just vary the language of his amendment somewhat, so that it would cover the idea of prohibiting "anything declared to be unlawful by this act or declared by the commission to be an unfair method of competition," and then go on and fix its punishment, it would be more nearly in accord with the universal law of justice.

Mr. CLAPP. The trouble with that is that it might establish one rule for the man who was aggrieved and an entirely different rule as to the fact of the law itself taking effect. I do not know whether the courts are going to hold that a particular act which could be illustrated is or is not of itself forbidden by this act; whether or not it must wait until the commission has made its declaration; and the two should stand or fall together. There should not be one rule of action for the man who seeks a recovery and another rule of action with reference to the operation and effect of the law itself as governed by the decision of the courts.

Mr. STONE. Mr. President, I can not escape the conviction that it would be better not to incorporate this proposed provision, in any of the forms suggested, in this bill. There is such a provision in laws that have been passed heretofore and in the so-called Clayton bill; but the situation presented in those laws and in that bill, it seems to me, is radically different from that which confronts us when we consider the pending measure.

This proposed trade-commission law is an experimental legislative enterprise upon which we are entering, and it is far wider in the field it will cover than the interstate-commerce law or the Sherman antitrust law or the Clayton bill. It deals with a far greater variety of subjects. Innumerable cases will arise under this statute, if it becomes one, forbidding unfair competition, wholly different in their facts and in the real principles involved than can possibly arise under the antitrust laws, under the interstate-commerce law, or under the Clayton bill.

I am impressed with the belief that, as a matter of public policy, it would not be advisable at this time in this statute to give to every man who felt that he was in some wise oppressed or imposed upon by what he might be pleased to designate "un-

fair competition" the right to institute a suit in court. The learned junior Senator from Montana [Mr. WALSH] contended, in some remarks he made recently, that in his opinion the right to sue, if this bill becomes a law in its present form, even without inserting the proposed amendment, would exist as completely as if the amendment should be put in. I think I correctly understood him. The Senator indicates by nodding his head that I did. If that be true, then, Mr. President, there would be no need of incorporating this amendment in the bill. I am not satisfied in my own mind that the right to sue in the absence of the amendment would exist, though I express that opinion with greater hesitation than I otherwise would because of the conviction expressed by the Senator from Montana and one or two other able lawyers in the Senate.

Mr. WALSH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from Montana?

Mr. STONE. Certainly.

Mr. WALSH. If the Senator will pardon me, I speak with some degree of confidence about the matter, because I had occasion to appeal to the principle in a proceeding of this character:

A hotel was destroyed by fire. The local statute required that every hotel should have in each of its rooms a rope or other contrivance which would permit guests to escape in case of fire, and a penalty was prescribed for failure to observe the act. That was all there was to it. We contended, and successfully contended, that one injured who would have escaped conveniently if the fire escape had been provided, had a right of action against the owners of the hotel. The act of not having the fire escape being denounced by the statute as being unlawful, the right to recover for injuries received by reason of the fact that the fire escape was not there was sustained by the court.

Mr. STONE. I am not sure by any means that the case stated by the Senator from Montana would run parallel with cases that would arise under this bill. In the case to which he refers there was an act requiring fire escapes in structures such as the one in question in that case——

Mr. WILLIAMS. And it was denounced as unlawful not to have them.

Mr. STONE. And, as the Senator from Mississippi says, the statute made it unlawful not to have the fire escapes. A guest at the hotel was injured, in a fire which destroyed the hotel, because of the absence of the fire escape. I should think that the right to sue in such a case would be clear, but I am not entirely certain that it is so clear in cases that would arise under this bill.

Mr. President, if suit can be brought anyhow, as the Senator from Montana thinks, then I suppose no harm would result by asserting the right to sue in the statute itself; but if there is a question about it, as it seems to me there is, then I halt when the proposal is made to confer the right in terms by the statute.

As I said a moment ago, innumerable instances will arise where individuals and corporations may contend that they have been injured by some oppressive misconduct of a business nature, leveled at them by some other corporation. The number of these suits that might be brought no man can estimate. Is there not a real danger that if the right to bring such a suit is conferred, whether the Federal trade commission has passed on the case or not—that is, independently of the trade commission—a certain class of lawyers, especially in large communities, will arise to ply the vocation of hunting up and working up such suits?

Mr. WEST. "Razorback" lawyers.

Mr. STONE. My friend calls them "razorback" lawyers. The Senator from Mississippi [Mr. WILLIAMS] suggests the designation of "ambulance chasers," and other designations have been applied to them. The kind of lawyers to whom I refer are well known. When these attorneys or their agents hear that complaint has been made that somebody has been imposing upon somebody else through what is called "unfair competition," they will offer to stop it by suit for damages, and possibly by a suit for injunction; for, I suppose, if you can bring a suit for damages in such cases you can also seek to prevent the continuance of the wrong complained of. Thus we would have opened up two tribunals to which appeals might be made, one the commission and the other the district court.

Now, Mr. President, if we should find that some individual had gone into a district court with a suit for damages under the provisions of this law, which he clearly would have a right to do if this amendment is inserted, and the court should hold that on the facts developed at the hearing the statute had been violated, that the acts complained of did constitute unfair competition and were therefore unlawful, and let the case go to the jury to determine the damages, there would be a rule judicially established. It is not difficult to suppose that in the future—not a great while thereafter, perhaps—some proceeding would be instituted before the trade commission in which exactly the same state of facts would be developed, and if the commission should hold on the hearing that the facts did not constitute unfair competition, you would have another rule established by the commission. Thus you would have two rules of action established by two tribunals, each having a jurisdictional right to hear and pass upon the complaints severally made to them.

I fear it would lead to confusion; and inasmuch as this is an experimental kind of legislation we are entering upon, may we not undertake to do too much? Let us get the commission, and give to it all reasonably necessary authority, and stop there. With the right of appeal to the courts given to the parties it seems to me that in due time a system of judicature would be developed around the statute, building up just such a system as has been developed around the interstate-commerce law. I am fearful about putting amendments of this nature in the bill. I have a well-formed conviction that if we attempt to do too much we will accomplish less for the public good.

Mr. REED. Mr. President, I do not intend to argue this question, but it seems to me that the difficulty suggested by my colleague is unescapable if this law means what its authors claim it means. It has been said here by the authors of the bill that it is intended to prohibit every kind of unfair and oppressive trade practice. They have proceeded to catalogue all those acts which have been condemned by the courts in the various antitrust decisions as coming within the purview of this act. Among those acts so catalogued which these gentlemen say will come within the meaning of the term "unfair competition" are many acts now actionable at law. As to those acts now actionable by law there is no way you can deny the citizen the right to go into the courts, and if he does go into the courts he will obtain a decision, and that decision might be in conflict with a decision of a trade commission, just as a decision rendered by a court in a case brought under the Clapp amendment might be in conflict with a decision of the commission.

That is the defect I see in the very persuasive observations made by my colleague. To illustrate that defect, I call attention to the fact that it is claimed this bill will cover the imitation of goods of A by B in trade, so that A in fact defrauds B of his trade and defrauds the public. That is already actionable.

It can be prevented in equity and damages can be recovered at law. It is claimed that the term covers trade slanders. That is already actionable both at law and in equity. It is claimed that it covers the practice of spying upon another's business, coupled with the use of that information in a way to injure and destroy the business of another. That is certainly actionable. Now, as this is the present legal situation, we can not escape the difficulty suggested by my colleague. Indeed, it seems to me that if we could have court decisions for a guide, they would serve as milestones which might be followed by this commission; the members of the commission are not required under the terms of this bill to be either learned in the principles of the law or of equity; neither is the commission required to proceed in accordance with the rules of law. Therefore I do not think the objection is a sound one.

But I can not refrain from expressing my astonishment that it is actually proposed to set up a tribunal and give it a power which affects nearly all the business of the United States, and that power is to be exercised under a so-called statute which is so indefinite, so vague, that the authors of the bill say it would be unjust to punish any citizen for violating it.

That, sir, is a pitiable plea. That is a confession of judgment. That is an admission you are doing a dangerous thing. Whoever puts upon the statute books of this country a law so vague that the citizen can not understand that law, so vague that he dare not punish the citizen for violating it, has done that which seems to me is not only unjustifiable, but reprehensible in the highest degree.

Mr. MYERS. I should like to ask the Senator a question. I understand the Senator's chief complaint here has been that the term "unfair competition" is so vague and indefinite that nothing of a settled nature can be derived therefrom. How, then, can the Senator consistently advocate that a man under the clause can be mulcted in triple damages?

Mr. REED. I can make that argument and yet be very consistent. I have said that this law is vague and is indefinite and is uncertain, and therefore that it ought to be made definite and certain, and I am still contending for that. But Senators on the other side say it is not vague, that it is not indefinite, that its meaning will be easily understood, and therefore they

justify themselves in forcing it upon the country, and having by that argument justified themselves in forcing it upon the country they now turn squarely around and in the same breath say that it is so meaningless, so vague, and so uncertain that no man ought to be punished for its violation.

That is equivalent to saying that you fear your own law; that you are creating a Frankenstein; and that you tremble lest its giant strength will be used to strike and destroy. You now admit that you do not know how far you are going nor what mischief may follow.

I appeal to the Senate to put a guide in this law, a definition in this law, which will enable a citizen to know what it means, without first going to a tribunal that may be 3 000 miles from his home in order to ascertain what that tribunal may guess it means. If you pass a law that is so meaningless that it can not be understood, and yet power is conferred by it, then its meaning is not to be gained from the terms of the law itself, but must be gained from the decision of a commission. Stated differently, you have given the commission the power to make a law, for you have given it power to construe a meaning into a law which is, in fact, without meaning. That is but another way of saying that you have given the commission power to make anything legal or illegal, according to its own will. How can you escape the conclusion that you are conferring upon the commission a grant of arbitrary power? Such a law is at war with every principle of American Government.

It is a startling thing, an astonishing thing, to find men willing to confer upon an unnamed and perhaps an unlearned commission authority to enforce upon the people of the United States their construction of a law which is so vague that its authors dare not give the right to a citizen to sue under it, or a court the right to enforce it for the benefit of the citizen.

We can set up a guide. We can define these wrongs. We can set forth the long list of dishonest and oppressive acts that has been rehearsed during this debate and specifically prohibit them. Thus we will have reached the great evils that now confront us, or we can in general terms describe the character and nature of the acts and practices which are prohibited.

No tribunal of earth should be intrusted with authority to enforce a law the ordinary citizen can not understand. No law is fit for a free people that can not be read and understood by the people. What tyrant was it who nailed his laws so high the people could not see them, and then punished the people for violating a law they had no chance to know existed and hence could never have understood? We make a law so vague it can not be understood; we stand here admitting it can not be understood by the ordinary citizen of the country or by the lawyer learned in all the principles of law, and say then that man shall be held to such a law as that.

The vouchers for this bill not only admit the citizen and lawyer can not understand what it means, but they now tell us it is so very bad, vague, obscure, misty, uncertain, and indefinite that no court can understand it or be trusted to construe it.

Mr. WALSH. I understand the Senator wants to impose penalties on them as well.

Mr. REED. Sir, I take this position: That this bill as it now is written must have a guide put in, and I am seizing this opportunity, if possible, to point out the fact that those who insist upon the vague phrase "unfair competition is hereby declared unlawful" are embarking upon an enterprise the end of which they can not even guess.

Mr. President, I do not like to differ from so many of my friends on this side. It is not pleasant. But surely we ought not to be passing laws which we are forced in advance to admit that no human being can know what they mean until a commission guesses at what they mean.

Let us see whether there are any hardships connected with such an enactment. Here is a man engaged in business in San Francisco. It may be a small business, nevertheless interstate. He is served with a notice, and thereupon he must travel across the continent to the city of Washington where this commission sits. He must bring his witnesses or he must bring their depositions. He must employ his attorney. All this to meet what? To meet a charge of violating a law he can not understand and that nobody in the world understands; to answer for a practice he did not know was prohibited and nobody else knew was prohibited; to be tried for doing a thing under a law that is so meaningless he did not have the slightest idea of violating it. He can not know. He never had a chance to know until after he has traveled across the continent and the commission advises him what its guess is.

How many of these cases will you have? Who shall undertake to count them? Who will number them? There are millions of business transactions taking place in this country every day. The aggregate of each day's business runs into billions, and for every single act there is the possibility of a complaint before this commission. What does the law mean? What is included within the term of the act?

A man is engaged in selling coal in California and also in four or five other States. He is selling it at $5 a ton. He is making a profit of 25 cents a ton. He has been established a long time. Another man enters the city of San Francisco to compete with him. He is only selling in the city of San Francisco. In order to get the first man's trade he is willing to cut his price to $4.75, knowing that if he can establish his coal at $4.75 the other man will be obliged not only to cut the price of coal in San Francisco but under the rule which it is said is embraced within these vague terms, if he cuts the price at San Francisco he must cut it in all the States where he is doing business just as he cuts it in San Francisco. Accordingly he withdraws from San Francisco because he would better lose the trade of San Francisco than to cut the price at all other places to a point where he can not make a penny. Accordingly the competitor who has come into San Francisco now occupies the field alone and is able to sell coal at $5.50 a ton. Thus, in this instance, the law intended to destroy monopoly has resulted in creating monopoly.

When a condition like that used in my illustration is presented and the merchant is confronted with the question whether he can meet the cut in San Francisco or not, he turns to that law. He finds no rule. No lawyer can tell him what it means. He only knows that here at Washington sit those who are privileged to interpret its Delphic language. He does not know what that august board will say. He only knows the board may at any time summon him to come before it, and that he must come upon peril of having his business ruined by an injunction. He only knows he must cross the continent and bring his lawyers and evidence and submit himself to the arbitrament of five gentlemen who can construe a law any way they please and prohibit anything they do not like.

Mr. President, the illustration I gave is not the best which might be imagined. It is true this bill affects great trusts and great combinations, but it also affects every man and corporation engaged in interstate commerce. Many of them are small. A complaint may be lodged against a dealer whose yearly profits may not be $5 000 or may not be $3 000. Upon a complaint being made, perhaps by a malicious rival, the dealer must be dragged across this continent for what? For violating the law that he can understand? No. For violating a law the Senate can understand? No. For violating a law that the different authors of this bill and the committee themselves understand? No. But for violating a rule that is so vague that only the infinite God, who can look into the future and read the minds of the commission and know what their decision will be, could advise him in advance with reference to.

I do beseech Members of the Senate, and in what I say I know I weary them, and perhaps disgust them, that we shall write a rule here that somebody can understand. When you talk about giving 90 per cent of the business concerns of this country or 60 per cent or 40 per cent over to the control of a commission acting under a law so vague that you admit the citizen can not understand it and therefore you fear to give the citizen the right to sue under it; I say, as I have said before, and as others have said, you are conferring a power more arbitrary and more dangerous than is possessed by any despot of this earth. You are setting up a commission here, and if you will give it a proper rule that it must follow I shall welcome the commission; but when you lay down the rule that is to be followed, that rule ought to be so plain that the ordinary man can have a reasonable conception of its meaning. It should be so plain that if this commission proceeding under it denies to a citizen his substantial rights or ravishes him of his constitutional privileges he can have his recourse to courts where the law is known and administered.

I know there are men—and good men and wise men—who have a great prejudice against our Federal courts. I agree that much of the criticism leveled against the Federal courts has been just. I think it is true, and that I can say with entire propriety, that for a number of years the tendency of the Federal courts was too much in favor of great property interests. Why was that? It was, at least in part, because great interests had been able to control to some extent the appointment of Federal judges. If that is true, if great interests could control in part or in toto the selection of men for the Federal judiciary, the same great interests, the same great influences can be, and ultimately may be, equally potential in the selection of this commission.

Then where will we be? Surely in an infinitely worse situation than we are now or ever have been, and why? Because when a Federal court has decided a question it has necessarily

been decided with the litigants upon both sides in court; it has been decided with the full right of appeal, with rules of law and precedents to be appealed to in the appellate courts. Every decision has become a precedent and the courts have always had before them the thought that if they wrote bad law they wrote it not for that case alone but for all the cases that were to come after.

So we have never found a time when in the end the courts have not come around to about what was right. Any man who reads the late decision of the Supreme Court upon the trust act will see that step by step they have been advancing into that field which has been occupied by combinations and trusts, and day by day they have been striking them down.

But if it be true, as is charged by some, that the courts have been unduly influenced and swerved, if their appointment has been controlled, if evil influences have been able to reach into the very temple of justice itself, what will some day happen with a commission appointed in the same way and proceeding under a rule of law so vague that no man dare hazard a guess as to what it means?

A commission is all right within its proper sphere. But what is its proper sphere? First, a law should be written, a rule to guide this commission; second, it could investigate and could undoubtedly produce a vast fund of information that might not only be used by it in the enforcement of that rule of law, but that could also be used by litigants when they went into the court.

I never expected to see the day when the law of the land would not be preferred over the decree of five gentlemen, or when the courts of justice would be distrusted by those who were willing to turn over the business of this country to five men, empowered to construe a meaningless and vague law as they may see fit, to declare that to be valid which suits their taste, and to strike down all who dare differ from their arbitrary and unbridled power.

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from North Dakota [Mr. MCCUMBER] to the amendment of the Senator from Minnesota [Mr. CLAPP].

BUREAU OF LABOR SAFETY.

Mr. KERN. Mr. President, I move that the Senate proceed to the consideration of executive business.

Mr. SHIVELY. Mr. President——

Mr. KERN. I withhold the motion temporarily and yield to my colleague.

Mr. SHIVELY. I ask unanimous consent to submit a favorable report from the Committee on Education and Labor on House bill 10735, to create a bureau of labor safety in the Department of Labor, and to submit a report (No. 712) thereon.

The PRESIDENT pro tempore. The Senator from Indiana asks unanimous consent to submit at this time a report from the Committee on Education and Labor. Is there objection? The Chair hears none. The report will be received and the bill will be placed on the calendar.

PETITIONS AND MEMORIALS.

Mr. BRISTOW presented petitions of sundry citizens of Eureka, Colby, Kanorado, Formoso, and of the first congressional district, all in the State of Kansas, praying for national prohibition, which were referred to the Committee on the Judiciary.

He also presented a memorial of Plumbers' and Steamfitters' Local Union No. 609, of Manhattan, Kans., remonstrating against national prohibition, which was referred to the Committee on the Judiciary.

He also presented petitions of sundry citizens of Kansas, praying for the enactment of legislation to recognize Dr. Cook in the matter of the discovery of the North Pole, which were referred to the Committee on the Library.

Mr. BRANDEGEE presented a petition of sundry citizens of Brookfield Junction, Conn., praying for national prohibition, which was referred to the Committee on the Judiciary.

Mr. BURTON presented a petition of Local Union No. 330, International Molders' Union, of Ironton, Ohio, praying for the passage of the so-called Clayton antitrust bill, which was ordered to lie on the table.

PENSIONS AND INCREASE OF PENSIONS.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15959) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 6, 7, 10, and 15.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 8, 9, 11, 12, 13, 14, 16, 17, and 18, and agree to the same.

CHARLES F. JOHNSON,
WM. HUGHES,
REED SMOOT,
Managers on the part of the Senate.
JNO. A. KEY,
EDWARD KEATING,
SAM R. SELLS,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 16345) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1 and 16.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, and 18, and agree to the same.

CHARLES F. JOHNSON,
WM. HUGHES,
REED SMOOT,
Managers on the part of the Senate.
JNO. A. KEY,
EDWARD KEATING,
SAM R. SELLS,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 17482) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 10, 15, and 30.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35; and agree to the same.

CHARLES F. JOHNSON,
WM. HUGHES,
REED SMOOT,
Managers on the part of the Senate.
JNO. A. KEY,
EDWARD KEATING,
SAM R. SELLS,
Managers on the part of the House.

The report was agreed to.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles and referred to the Committee on Military Affairs:

H. R. 858. An act for the relief of Thomas E. Philips;

H. R. 14711. An act for the relief of Miles A. Hughes; and

H. R. 17464. An act for the relief of Fred Graff.

The following bills were severally read twice by their titles and referred to the Committee on the District of Columbia:

H. R. 6201. An act to authorize the Secretary of the Interior to issue a deed to the persons hereinafter named for part of a lot in the District of Columbia; and

H. R. 16755. An act authorizing and directing the Secretary of the Interior to execute and deliver a deed in favor of and to Ida Seymour Tulloch, Roberta Worms, and Ethel White Kimpell for sublot 38 of original lot 17, in reservation D, upon the official plan of the city of Washington, in the District of Columbia.

The following bills were severally read twice by their titles and referred to the Committee on Claims:

H. R. 2312. An act for the relief of Rathbun, Beachy & Co.;
H. R. 6530. An act for the relief of Michael F. O'Hare;
H. R. 7287. An act for the relief of Edward A. Thompson;
H. R. 11394. An act for the relief of Joseph A. Powers;
H. R. 12198. An act for the relief of Benjamin A. Sanders;
H. R. 13350 An act for the relief of the widow and heirs at law of Patrick J. Fitzgerald, deceased;
H. R. 13352. An act to allow credit in the accounts of Wyllys A. Hedges, special disbursing agent;
H. R. 13591. An act for the relief of John P. Ehrmann;
H. R. 13728. An act for the relief of Richard Riggles;
H. R. 14956. An act to reimburse the postmaster at Kegg, Pa., for money and stamps taken by burglars;
H. R. 16305. An act to reimburse Henry Weaver, postmaster at Delmar, Ala., for money and stamps stolen from said post office at Delmar, and repaid by him to the Post Office Department;
H. R. 16370. An act for the relief of the Richmond, Fredericksburg & Potomac and Richmond & Petersburg Railroad Connection Co.;
H. R. 17074. An act for the relief of the Paterson & Hudson River Railroad Co.;
H. R. 17085. An act for the relief of the Montgomery & Erie Railway Co.;
H. R. 17086. An act for the relief of the Goshen & Deckertown Railway Co.;
H. R. 17102. An act for the relief of the Columbus, Delaware & Marion Railway Co., of Columbus, Ohio;
H. R. 17110. An act to reimburse Epps Danley for property lost by him while lightkeeper at East Pascagoula River (Miss.) Light Station; and
H. R. 17424. An act for the relief of Hunton Allen.
H. R. 2642. An act authorizing the President to reinstate Joseph Eliot Austin as an ensign in the United States Navy, was read twice by its title and referred to the Committee on Naval Affairs.
H. R. 11765. An act to perfect the title to land belonging to the M. Forster Real Estate Co., of St. Louis, Mo., was read twice by its title and referred to the Committee on Public Lands.

EXECUTIVE SESSION.

Mr. KERN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened.

Mr. KERN. I move that the Senate adjourn to meet on Monday at 11 o'clock a. m.

The motion was agreed to; and (at 5 o'clock and 33 minutes p. m.) the Senate adjourned until Monday, August 3, 1914, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate August 1 (legislative day of July 27), 1914.

ASSISTANT SECRETARY OF AGRICULTURE.

Carl Schurz Vrooman, of Bloomington, Ill., to be Assistant Secretary of Agriculture, vice Beverly T. Galloway, resigned.

RECEIVER OF PUBLIC MONEYS.

Owen E. Thomas, of Fortine, Mont., to be receiver of public moneys at Kalispell, Mont., vice Robert M. Goshorn, term expired.

REGISTERS OF THE LAND OFFICE.

A. P. Tone Wilson, jr., of Topeka, Kans., to be register of the land office at Topeka, Kans., vice George W. Fisher, term expired.

Frank M. McHaffie, of Missoula, Mont., to be register of the land office at Missoula, Mont., vice Josiah Shull, term expired.

UNITED STATES ATTORNEY.

Arthur L. Oliver, of Caruthersville, Mo., to be United States attorney, eastern district of Missouri, vice Charles A. Houts, whose term has expired.

UNITED STATES MARSHAL.

John E. Lynch, of Moberly, Mo., to be United States marshal, eastern district of Missouri, vice Edward F. Regenhardt, whose term has expired.

CONFIRMATIONS.

Executive nominations confirmed by the Senate August 1 (legislative day of July 27), 1914.

CONSULS.

John K. Caldwell to be consul at Vladivostok, Siberia.
Arthur J. Clare to be consul at Port Antonio, Jamaica.

PROMOTIONS IN THE ARMY.

INFANTRY ARM.

Lieut. Col. Omar Bundy to be colonel.
Maj. Evan M. Johnson, jr., to be lieutenant colonel.
Capt. John K. Miller to be major.
First Lieut. Franklin P. Jackson to be captain.
Second Lieut. Blaine A. Dixon to be first lieutenant.
Second Lieut. Owen R. Meredith to be first lieutenant.
Second Lieut. James C. Williams to be first lieutenant.

COAST ARTILLERY CORPS.

Maj. Frank G. Mauldin to be lieutenant colonel.
Capt. James B. Mitchell to be major.
First Lieut. Edward E. Farnsworth to be captain.
Second Lieut. Fenelon Cannon to be first lieutenant.
Second Lieut. Fredrick E. Kingman to be first lieutenant.
Second Lieut. Simon W. Sperry to be first lieutenant.
Second Lieut. Daniel N. Swan, jr., to be first lieutenant.
Second Lieut. Charles M. Steese to be first lieutenant.
Second Lieut. Harry W. Stovall to be first lieutenant.

MEDICAL CORPS.

First Lieut. Edgar D. Craft to be captain.

APPOINTMENTS IN THE ARMY.

MEDICAL RESERVE CORPS.

To be first lieutenants.

Lester Julian Efird.
Maurice Eby Heck.
Charles Henry Hecker.
Robert John McAdory.
Richard Weil.
Justus Marchal Wheate.
S. Adolphus Knopf.

HOUSE OF REPRESENTATIVES.

SATURDAY, *August 1, 1914.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

O Thou great Spirit, from whom proceedeth life and its marvelous possibilities, impress us with the individual responsibility resting upon us as citizens of a great Republic, that each may strive earnestly and patriotically to add somewhat to its intellectual, moral, and spiritual life; that good may increase, evil diminish, harmony prevail; that as a nation we may advance steadily toward the ideal in Christ Jesus, our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Tulley, one of its clerks, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 6192. An act to amend section 27 of an act approved December 23, 1913, and known as the Federal reserve act.

The message also announced that the President of the United States had approved and signed bills of the following titles:

On July 30, 1914:

S. 485. An act to amend section 1 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911.

On July 27, 1914:

S. 5462. An act to authorize the county of Barry, State of Missouri, to construct a bridge across the White River in Barry County, Mo., at or near a point known as Goldens Ferry; and

S. 5957. An act to authorize the Frost-Johnson Lumber Co. to construct a bridge across the Sabine River in the States of Louisiana and Texas, about 2 miles west of Hunter, La.

On July 28, 1914:

S. 785. An act to relinquish, release, and quitclaim all right, title, and interest of the United States of America in and to certain lands in the State of Mississippi;

S. 1087. An act authorizing the exchange of certain lands within the Fishlake National Forest, Utah; and

S. 5316. An act authorizing the survey and sale of certain lands in Coconino County, Ariz., to the occupants thereof.

SENATE BILL REFERRED.

Under clause 2 of Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 6192. An act to amend section 27 of an act approved December 23, 1913, and known as the Federal reserve act; to the Committee on Banking and Currency.

LEAVE OF ABSENCE.

The SPEAKER. The Chair lays before the House the following personal requests, which the Clerk will report.

The Clerk read as follows:

WASHINGTON, D. C., *August 1, 1914.*

Mr. TALCOTT of New York requests leave of absence for five days on account of the unveiling of statue to Baron von Steuben.

CHARLES A. TALCOTT.

—

BATH, N. Y., *July 30, 1914.*

Hon. CHAMP CLARK,
Washington, D. C.

MY DEAR MR. SPEAKER: I am going to sail for London to-morrow with my wife to attend the annual meeting of the Interparliamentary Union at Stockholm. I expect to be absent about five weeks. Will you kindly present my request to the House to be excused for that length of time?

With kind regards, I remain,
Very cordially, yours,

EDWIN S. UNDERHILL.

The SPEAKER. Is there objection to the granting of these requests?

Mr. DONOVAN. Mr. Speaker, I am going to object to the last request—the request of the gentleman who wants to go abroad. We are afraid the dogs of war will get hold of him. [Laughter.]

The SPEAKER. The gentleman from Connecticut [Mr. DONOVAN] objects to the last one, and not the first one. Without objection, the first one will be granted.

There was no objection.

BRIDGE ACROSS THE MERRIMAC RIVER, MASS.

Mr. PHELAN. Mr. Speaker, I move to take from the Speaker's table Senate bill 6101, to grant the consent of Congress for the city of Lawrence, county of Essex, State of Massachusetts, to construct a bridge across the Merrimac River, and pass the bill. I may say, Mr. Speaker, this bill is identical with a House bill on the calendar which has been reported by the Committee on Interstate and Foreign Commerce.

The SPEAKER. The gentleman from Massachusetts [Mr. PHELAN] moves to take from the Speaker's table Senate bill 6101, a similar House bill being on the House Calendar.

Mr. MANN. I understand the gentleman asks the Speaker to lay it before the House?

The SPEAKER. Yes. The Clerk will report it.

The Clerk read as follows:

A bill (S. 6101) to grant the consent of Congress for the city of Lawrence, county of Essex, State of Massachusetts, to construct a bridge across the Merrimac River.

Be it enacted, etc., That the consent of Congress is hereby granted for the city of Lawrence, county of Essex, State of Massachusetts, and its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Merrimac River, at a point suitable to the interests of navigation, at or near the foot of Amesbury Street, in the city of Lawrence, in the county of Essex, in the State of Massachusetts, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The SPEAKER. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. ADAMSON, a motion to reconsider the vote whereby the Senate bill was passed was laid on the table.

Mr. ADAMSON. Mr. Speaker, I move that House bill 17882 be laid on the table.

The SPEAKER. Without objection, the House bill of similar tenor will lie on the table.

There was no objection.

BRIDGE ACROSS THE ARKANSAS RIVER, ARK.

Mr. ADAMSON. Mr. Speaker, there is another bill in the same condition, introduced by the gentleman from Arkansas [Mr. JACOWAY]. It is Senate bill 6084. I ask that the Speaker lay it before the House.

The SPEAKER. The gentleman from Georgia [Mr. ADAMSON] moves that the bill S. 6084 be taken from the Speaker's table and passed, a similar bill being on the House Calendar. The Clerk will report the bill.

The Clerk read as follows:

A bill (S. 6084) to grant the consent of Congress for the county of Pulaski, State of Arkansas, to construct a bridge across the Arkansas River between the cities of Little Rock and Argenta, Ark.

Be it enacted, etc., That the consent of Congress is hereby granted for the county of Pulaski, State of Arkansas, and its successors and assigns to construct, maintain, and operate a bridge and approaches thereto across the Arkansas River at a point suitable to the interests of navigation from Broadway Street, in the city of Little Rock, Ark., to a point on the north bank of the said river, in the city of Argenta, county of Pulaski, Ark., in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The SPEAKER. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. ADAMSON, a motion to reconsider the vote whereby the bill was passed was laid on the table.

Mr. ADAMSON. Mr. Speaker, I move to lay House bill 17637, of similar tenor, on the table.

The SPEAKER. Without objection, that will be done.

There was no objection.

PAYMENTS UNDER RECLAMATION PROJECTS.

Mr. TAYLOR of Colorado. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Colorado rise?

Mr. TAYLOR of Colorado. To call up Senate bill 4628, extending the payment under reclamation projects, and for other purposes, and to ask that the House agree to the conference asked for by the Senate.

The SPEAKER. The gentleman from Colorado calls up Senate bill 4628 and asks that the House agree to the conference asked by the Senate. The Clerk will report it.

The Clerk read the title of the bill, as follows:

S. 4628. An act extending the period of payment under reclamation projects, and for other purposes.

The SPEAKER. Without objection, the request——

Mr. MANN. Mr. Speaker, just a quarter of a second. I shall not raise any question with reference to the conferees to be named, because I shall have faith that the conferees will support the position of the House, which position was announced by a very large vote on the Underwood amendment, although all the gentlemen named as conferees on the part of the House voted against the amendment, and all the Senators who are named as conferees on the part of the Senate are also known to be against it.

Mr. TAYLOR of Colorado. Mr. Speaker, I will say to the gentleman from Illinois that——

Mr. MANN. The gentleman need not express any opinion to me. I accept in good faith his sense of responsibility.

The SPEAKER. Is there objection to the request of the gentleman from Colorado [Mr. TAYLOR]?

Mr. FALCONER rose.

The SPEAKER. For what purpose does the gentleman from Washington rise?

Mr. FALCONER. Reserving the right to object, I would like to ask unanimous consent to insert a little clipping from the Washington Herald on this question that is involved in the query propounded by the gentleman from Illinois.

The SPEAKER. The gentleman from Washington [Mr. FALCONER] asks unanimous consent to insert in the RECORD a clipping from the Washington Herald on the subject. Is there objection?

Mr. FOSTER. Mr. Speaker, I do not think the gentleman ought to do that under this proceeding.

The SPEAKER. The gentleman was reserving the right to object.

Mr. TAYLOR of Colorado. The gentleman from Washington does not object to the bill going to conference.

The SPEAKER. It does not require unanimous consent, anyhow.

Mr. TAYLOR of Colorado. Mr. Speaker, I move that the House agree to the conference asked for by the Senate.

The SPEAKER. The question is on agreeing to the motion of the gentleman from Colorado [Mr. TAYLOR] that the House agree to the conference asked by the Senate.

The motion was agreed to; and the Speaker announced as conferees on the part of the House Mr. TAYLOR of Colorado, Mr. RAKER, and Mr. KINKAID of Nebraska.

The SPEAKER. The Clerk will report the first bill reported yesterday by the Committee of the Whole.

Mr. FALCONER. Now, Mr. Speaker, I renew my request for unanimous consent to insert a newspaper article on this question of annual appropriations for the Reclamation Service.

The SPEAKER. The gentleman from Washington [Mr. FALCONER] asks unanimous consent to insert in the RECORD a newspaper article on the subject of annual appropriations for the Reclamation Service. Is there objection?

There was no objection.

DR. THOMAS J. KEMP.

Mr. WEBB. Mr. Speaker, I desire to present from the Committee on the Judiciary a privileged adverse report (No. 1058) on House resolution 572, and ask that it be printed and that its consideration go over until next week; and I now give notice that I shall call up the resolution next week. I also ask unanimous consent that the gentleman from Minnesota [Mr. VOLSTEAD], the ranking Republican member of the Committee on the Judiciary, have the right to file a minority report.

Mr. MANN. If it is an adverse report, under the rule he can ask to have it placed on the calendar. I hope that the gentleman will ask that it be so placed.

Mr. MURDOCK. What is the resolution?

Mr. WEBB. It is a resolution calling upon the President for all papers on file with him or with the Department of Justice in relation to the application for pardon of Dr. Kemp.

The SPEAKER. The Clerk will read the report by title.

The Clerk read as follows:

Report No. 1058 (to accompany H. Res. 572), calling upon the President for papers in the Kemp pardon case.

Mr. DONOVAN. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. DONOVAN. To ask unanimous consent to have read from the Clerk's desk an article that I have sent up.

The SPEAKER. The gentleman from Connecticut asks unanimous consent to have read from the Clerk's desk a certain chapter from Thirty Years in the United States Senate, by Thomas Hart Benton. Is there objection?

Mr. MANN. Reserving the right to object, Mr. Speaker, I would like to ask the gentleman from Georgia what is his intention in relation to adjournment to-day?

Mr. ADAMSON. I think that all patriots ought to unite, in view of the momentous events to follow this afternoon, to complete the bill in time to go to the baseball. There has been so much debate that I think if gentlemen will offer their amendments and have them voted on we will get through at an early hour.

Mr. MANN. I understand there is to be a baseball game between the Members of the House this afternoon for charitable purposes, and I wondered whether the gentleman would move to adjourn in time to attend the game.

Mr. BUTLER. Will charity be helped much?

Mr. MANN. I think so; and I think we should adjourn early enough, so that Members may attend the game.

Mr. ADAMSON. I think it would be doubly charitable if Members were to be so stimulated as to abstain from debate and offer their amendments and get through with the bill.

Mr. MANN. I will agree to talk less than the gentleman from Georgia does.

Mr. ADAMSON. And I will agree not to debate it at all. Let us offer the amendments and vote on them.

Mr. MANN. But the gentleman has not answered my question.

Mr. ADAMSON. I am going to do my best to get through and get out of the way of the baseball game.

Mr. MANN. Very well; I shall make the point of no quorum a little before 3 o'clock.

Mr. ADAMSON. Then I guess we will have to adjourn.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut? [After a pause.] The Chair hears none.

The Clerk read as follows:

"PAIRING OFF.

"At this time, and in the House of Representatives, was exhibited for the first time the spectacle of Members 'pairing off,' as the phrase was; that is to say, two Members of opposite political parties agreeing to absent themselves from the duties of the House, without the consent of the House and without deducting their per diem pay during the time of such voluntary absence. Such agreements were a clear breach of the rules of the House, a disregard of the Constitution, and a practice open to the grossest abuses. An instance of the kind was avowed on the floor by one of the parties to the agreement, by giving as a reason for not voting that he had 'paired off' with another Member, whose affairs required him to go home. It was a strange annunciation and called for rebuke; and there was a Member present who had the spirit to administer it; and from whom it came with the greatest propriety on account of his age and dignity and perfect attention to all his duties as a Member, both in his attendance in the House and in the committee rooms. That Member was Mr. John Quincy Adams, who immediately proposed to the House the adoption of this resolution: '*Resolved*, That the practice, first openly avowed at the present session of Congress, of pairing off, involves, on the part of the Members resorting to it, the violation of the Constitution of the United States, of an express rule of this House, and of the duties of both parties in the transaction to their immediate constituents, to this House, and to their country.' This resolve was placed on the calendar to take its turn, but not being reached during the session was not voted upon. That was the first instance of this reprehensible practice, 50 years after the Government had gone into operation; but since then it has become common, and even inveterate, and is carried to great length. Members pair off, and do as they please—either remain in the city, refusing to attend to any duty, or go off together to neighboring cities, or separate, one staying and one going; and the one that remains sometimes standing up in his place and telling the Speaker of the House that he had paired off, and so refusing to vote. There is no justification for such conduct, and it becomes a facile way for shirking duty and evading responsibility. If a Member is under a necessity to go away, the rules of the House require him to ask leave; and the Journals of the early Congresses are full of such applications. If he is compelled to go, it is his misfortune, and should not be communicated to another. This writer had never seen an instance of it in the Senate during his 30 years of service there; but the practice has since penetrated that body, and 'pairing off' has become as common in that House as in the other, in proportion to its numbers, and with an aggravation of the evil, as the absence of a Senator is a loss to his State of half its weight. As a consequence, the two Houses are habitually found voting with deficient numbers—often to the extent of a third—often with a bare quorum.

"In the first age of the Government no Member absented himself from the service of the House to which he belonged without first asking and obtaining its leave; or, if called off suddenly, a colleague was engaged to state the circumstances to the House, and ask the leave. In the Journals of the two Houses for the first 30 years of the Government there is in the index a regular head for 'absent without leave,' and turning to the indicated page every such name will be seen. That head in the index has disappeared in later times. I recollect no instance of leave asked since the last of the early Members—the Macons, Randolphs, Rufus Kings, Samuel Smiths, and John Taylors of Caroline—disappeared from the Halls of Congress."

ORDER OF BUSINESS.

Mr. TAYLOR of Colorado rose.

The SPEAKER. For what purpose does the gentleman rise?

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent to be allowed to address the House for five minutes.

Mr. ADAMSON. Mr. Speaker, I think he can be heard in the Committee of the Whole after we go into committee.

The SPEAKER. The gentleman from Georgia objects.

Mr. ADAMSON. I do not object. I just ask him to take that course.

Mr. TAYLOR of Colorado. Very well.

Mr. ADAMSON. He agrees. [Laughter.]

The SPEAKER. Does the gentleman from Colorado withdraw his request?

Mr. TAYLOR of Colorado. Yes; for the present.

BILLS PASSED.

The following Senate bill, reported from the Committee of the Whole with amendments, was considered, the amendments agreed to, the bill ordered to be read a third time, read the third time, and passed:

S. 23. An act for the relief of Clara Dougherty et al.

The following Senate bills, reported from the Committee of the Whole without amendment, were severally considered, the bills ordered to be read a third time, read the third time, and passed:

S. 3761. An act for the relief of Matthew Logan;

S. 1803. An act for the relief of Benjamin E. Jones;

S. 1149. An act for the relief of Seth Watson;

S. 663. An act for the relief of Thomas G. Running; and

S. 4023. An act for the relief of Walter H. Coffman.

The following House bills, reported from the Committee of the Whole with amendments, were severally considered, the amendments agreed to, the bills as amended ordered to be engrossed and read the third time, read the third time, and passed:

A bill (H. R. 17102) for the relief of the Columbus, Delaware & Marion Railway Co., of Columbus, Ohio;

A bill (H. R. 7287) for the relief of Edward A. Thompson;

A bill (H. R. 13728) for the relief of Richard Riggles;

A bill (H. R. 13591 for the relief of John P. Ehrmann;

A bill (H. R. 11394) for the relief of James A. Powers;

A bill (H. R. 13350) for the relief of the widow and heirs at law of Patrick J. Fitzgerald, deceased;

A bill (H. R. 6530) for the relief of Michael F. O'Hare;

A bill (H. R. 2312) for the relief of Rathbun, Beachy & Co.;

A bill (H. R. 2642) authorizing the President to reinstate Joseph Eliot Austin as an ensign in the United States Navy;

A bill (H. R. 858) for the relief of Thomas E. Philips;

A bill (H. R. 12198) for the relief of Benjamin A. Sanders;

A bill (H. R. 16755) authorizing and directing the Secretary of the Interior to execute and deliver a deed in favor of and to Ida Seymour Tulloch, Roberta Worms, and Ethel White Kimpell for sublot 38 of original lot 17 in reservation D, upon the official plan of the city of Washington, in the District of Columbia;

A bill (H. R. 6201) to authorize the Secretary of the Interior to issue a deed to the persons hereinafter named for part of a lot in the District of Columbia;

A bill (H. R. 14711) for the relief of Miles A. Hughes; and

A bill (H. R. 17464) for the relief of Fred Graff.

The following House bills reported from the Committee of the Whole without amendment, were severally considered, the bills ordered to be engrossed and read a third time, read the third time, and passed:

A bill (H. R. 13352) to allow credit in the accounts of Wyllys A. Hedges, special disbursing agent;

A bill (H. R. 17110) to reimburse Epps Danley for property lost by him while light keeper at East Pascagoula River (Miss.) Light Station;

A bill (H. R. 16370) for the relief of the Richmond, Fredericksburg & Potomac and Richmond & Petersburg Railroad Connection Co.;

A bill (H. R. 17085) for the relief of Montgomery & Erie Railway Co;

A bill (H. R. 16305) to reimburse Henry Weaver, postmaster at Delmar, Ala., for money and stamps stolen from said post office at Delmar and repaid by him to the Post Office Department;

A bill (H. R. 14956) to reimburse the postmaster at Kegg, Pa., for money and stamps taken by burglars;

A bill (H. R. 17086) for the relief of the Goshen & Deckertown Railway Co.;

A bill (H. R. 17074) for the relief of the Paterson & Hudson River Railroad Co.; and

A bill (H. R. 17424) for the relief of Hunton Allen.

The following House resolutions, reported from the Committee of the Whole without amendment, were severally considered and agreed to:

A resolution (H. Res. 551) in lieu of H. R. 1049, to refer the claims of H. E. Johnson, John F. Shelley, Jane M. Johnson, and Duff Quinn to the Court of Claims;

A resolution (H. Res. 552) in lieu of H. R. 1052, to refer the claim of Fred Larsen to the Court of Claims; and

A resolution (H. Res. 553) in lieu of H. R. 1051, to refer the claim of Peter W. Anderson to the Court of Claims.

FORSTER REAL ESTATE CO.

The following House bill with amendments, reported from the Committee of the Whole, was reported by the Clerk:

A bill (H. R. 11765) to perfect the title to land belonging to the M. Forster Real Estate Co., of St. Louis, Mo.

Mr. MANN. Mr. Speaker, my recollection is that in this bill there is a preamble which should be stricken out.

The SPEAKER. That will be in the nature of an amendment.

Mr. MANN. The striking of it out will come after the vote on the bill.

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The SPEAKER. Without objection, the preamble will be stricken out.

There was no objection.

Mr. DONOVAN. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. DONOVAN. To make the point of no quorum, for this reason: The great State of New York is represented on this floor at the present moment by only one Member—that great commercial State.

The SPEAKER. Does the gentleman make the point that there is no quorum present?

Mr. GALLAGHER. I should like to ask the gentleman a question.

SEVERAL MEMBERS. Regular order!

The SPEAKER. No one has the floor. The Chair is trying to find out whether the gentleman from Connecticut adheres to the point of no quorum.

Mr. DONOVAN. I withdraw it, Mr. Speaker.

Mr. MANN. If the gentleman withdraws it I shall make it. I am through with this kind of tomfoolery. I make the point of no quorum present.

The SPEAKER. The gentleman from Illinois makes the point of no quorum present. Evidently there is not a quorum present.

Mr. ADAMSON. I move a call of the House.

The SPEAKER. The gentleman from Georgia moves a call of the House.

The question was taken; and on a division (demanded by Mr. ADAMSON) there were—ayes 64, noes none.

Accordingly a call of the House was ordered.

The Clerk proceeded to call the roll, when the following Members failed to answer to their names:

Adair	Estopinal	Kreider	Rayburn
Aiken	Fairchild	Lafferty	Reed
Ainey	Faison	Langham	Reilly, Wis.
Anthony	Fields	Langley	Riordan
Ashbrook	Fitzgerald	Lazaro	Roberts, Mass.
Aswell	Fitzhenry	L'Engle	Rogers
Austin	Floyd	Lenroot	Rothermel
Avis	Fordney	Lever	Rouse
Baker	Francis	Levy	Sabath
Barchfeld	Frear	Lewis, Md.	Saunders
Barkley	Gallivan	Lewis, Pa.	Scully
Bartholdt	Gard	Lindbergh	Sells
Bartlett	Gardner	Lindquist	Sherley
Beall, Tex.	George	Linthicum	Sherwood
Borland	Gill	Lobeck	Shreve
Brodbeck	Gillett	Loft	Sisson
Broussard	Gittins	Logue	Slayden
Brown, N. Y.	Goeke	Lonergan	Smith, Md
Browne, Wis.	Goldfogle	McAndrews	Smith, J. M. C.
Browning	Gordon	McClellan	Smith, N. Y.
Bruckner	Gorman	McGillicuddy	Smith, Tex.
Bulkley	Goulden	McGuire, Okla.	Stafford
Burke, Pa.	Graham, Ill.	Mahan	Stanley
Byrnes, S. C.	Graham, Pa.	Maher	Steenerson
Byrns, Tenn.	Green, Iowa	Manahan	Stephens, Miss.
Calder	Greene, Mass.	Martin	Stephens, Nebr.
Callaway	Gregg	Merritt	Stringer
Cantrill	Griest	Metz	Sumners
Carew	Griffin	Montague	Switzer
Carr	Gudger	Moore	Taggart
Cary	Hamill	Morgan, La.	Talbott, Md.
Casey	Hamilton, Mich.	Morin	Talcott, N. Y.
Chandler	Hamilton, N. Y.	Mott	Taylor, N. Y.
Clancy	Hardwick	Murray, Okla.	Temple
Clark, Fla.	Hart	Neeley, Kans.	Ten Eyck
Coady	Heflin	Neely, W. Va.	Thacher
Connolly, Iowa	Henry	Nelson	Thomas
Conry	Hinds	O'Brien	Thompson, Okla.
Copley	Hinebaugh	Oglesby	Tribble
Covington	Hobson	O'Leary	Underhill
Crisp	Houston	O'Shaunessy	Underwood
Crosser	Hoxworth	Padgett	Vare
Dale	Hughes, Ga.	Paige, Mass.	Vaughan
Davenport	Hughes, W. Va.	Palmer	Vollmer
Dershem	Humphrey, Wash.	Park	Walker
Dies	Igoe	Parker	Wallin
Difenderfer	Johnson, S. C.	Patten, N. Y.	Walsh
Donohoe	Kahn	Payne	Walters
Dooling	Keister	Peters, Me.	Weaver
Driscoll	Kelley, Mich.	Peters, Mass.	Whitacre
Drukker	Kent	Platt	White
Dupré	Kiess, Pa.	Plumley	Williams
Eagan	Kindel	Porter	Willis
Eagle	Kinkead, N. J.	Post	Wilson, N. Y.
Edmonds	Kitchin	Powers	Winslow
Edwards	Knowland, J. R.	Ragsdale	Young, Tex.

COLORADO DAY.

Mr. TAYLOR of Colorado. Mr. Speaker, on August 1, 1876, 38 years ago to-day, the State of Colorado was admitted into the Union by the proclamation of President Grant, and has ever since been known as the Centennial State. [Applause.]

This is, in my State, a legal holiday, known as "Colorado Day," and at this hour in our capital city, and in many other cities and towns throughout the State, business is suspended, and practically the entire population is celebrating this thirty-eighth anniversary of our statehood. This afternoon in the city park, of our magnificent capital, the bands are playing, there is speaking by public officials, State flag raisings, songs, and parades; the young people are enjoying various kinds of sports; 50 civic, patriotic, and fraternal societies are taking part in the day's festivities; and it is a gala celebration of a happy, patriotic, and prosperous people. [Applause.] The exercises are under the management and auspices of the patri-

otic order known as the Sons of Colorado, of which I am pleased to be one.

Thirty-eight years ago to-day our State had a population of only a few thousand hardy pioneers, who were nobly battling against the hardships and privations of frontier life. To-day we have a population of nearly a million progressive, well-educated, splendid twentieth-century American citizens. [Applause.] Denver, our State capital, is, we think, the newest, cleanest, and most beautiful city on this continent. It is known throughout the world as "The Queen City of the Plains."

To-day Colorado is the front door of the West, the gateway to the Pacific, the playground of the Nation, and the Switzerland of America. The Centennial State is the top of the world, and the crest of the American continent, the land of bright skies, and 330 sunlit days in every year. The paradise of healthful climate and gorgeous scenery. [Applause.] All mankind bows before Colorado's scenic shrine. Our mountains are filled with minerals, and our valleys are the most fruitful in the world.

Nature has lavished upon our State nearly all of her choicest gifts, and it is indeed the land of inspiration and opportunity. [Applause.] As loyal sons of our beloved Commonwealth the Colorado delegation in the Senate and House of Representatives have just been celebrating this day by presenting to the Union and dedicating the memorial tablet recently furnished by our State and placed in the Washington National Monument; and at this hour a salute of 21 guns is being fired in Denver to commemorate this occasion. [Applause.]

On behalf of my State I want to express to the Marine Band our appreciation of their courtesy in furnishing us the splendid soul-inspiring patriotic music of the occasion, and to thank our beloved Chaplain, Dr. Couden, for his kindness in joining with us in invoking a fervent blessing upon our Commonwealth and the memorial emblem of our State's loyalty to the Union and reverence for the Father of his Country. [Applause.]

The tablet which we have to-day dedicated is placed in the east wall of the Monument at the 290-foot level. It contains the word "Colorado," the figures "1876," and our State's coat of arms, all artistically sculptured upon a block of absolutely spotless pure-white marble, a sample of which I hold in my hands. [Applause.] It is the marble selected by the most distinguished body of men this Nation has ever had upon any commission, to be the material used in the Abraham Lincoln Memorial in this Capital city. And when that structure is completed it will be one of the most magnificent monuments on this planet. This material comes from a solid mountain of pure-white marble near my home in western Colorado. A mountain from which could be taken—if there was powerful enough machinery—a solid block of pure-white marble as large as this Capitol Building. [Applause.]

But I will not delay the proceedings of the House to recite the material wealth or myriads of attractive features of our superb State, but will, on behalf of the entire population of Colorado, extend to you all a cordial invitation to some time visit our State and our people and see for yourself the marvelous scenery, the bright sunshine, the health and wealth that we enjoy.

COME TO COLORADO.

Come up a mile where the air is pure,
Where the skies are clear and blue;
Come up above the smoke and dust,
Where good health waits for you.

[Applause.]

Mr. MANN. Say when!

Mr. TAYLOR of Colorado. At the first opportunity after this session adjourns. [Applause.] When you enter our capital city you will be greeted with a magnificent bronze arch extending to you a "Welcome," and on your departure you will receive the ancient and heartfelt blessing, "Mizpah"—God be with you till we meet again. [Loud applause.]

Mr. Speaker, I will insert in the RECORD as a part of my remarks a brief recital of the ceremonies in commemoration of the dedication of Colorado's memorial tablet in the Washington National Monument. The exercises were held within the monument, on the 290-foot level, adjoining the tablet. I was accorded the honor of presiding and welcoming the Coloradans and our guests and presenting the various speakers.

After music by the Marine Band, the chaplain of the House of Representatives invoked divine blessing upon the occasion, as follows:

PRAYER BY REV. HENRY N. COUDEN.

"Eternal God, our heavenly Father, ever present in the hearts of Thy children to uphold, sustain, and guide them in every onward and upward movement toward the betterment of mankind, we thank Thee for our Republic and the men whose souls live in its sacred institutions 'conceived by our fathers in liberty and dedicated to the proposition that all men are created equal.'

"We gather here this morning to add in marble the gratitude of the great State of Colorado to this splendid monument erected to the memory of him whom we delight to call the 'Father of his country.' May this tablet be a perpetual memorial of the loyalty and patriotism of the Centennial State to the Union, whose genius is liberty, justice, righteousness, peace, and good will to all mankind. May its brain and brawn contribute strength, glory, and prosperity to our Nation and honor itself by honoring the Nation whose flag floats in triumphant peace over its fertile soil, lofty mountains, mines of wealth, its schools, colleges, and churches dedicated to the worship of God, now and evermore, in the Spirit of the Lord Jesus Christ. Amen."

Thereupon the proclamation of Gov. Ammons, of Colorado, was read by the presiding officer, as follows:

COLORADO DAY PROCLAMATION.

August 1 will be Colorado's thirty-eighth birthday. Some years ago the lawmakers of the State, believing a proper observance of the day would promote a better spirit, greater cooperation among our people, and inspire a higher degree of State pride, provided that the 1st day of August of each year should be a holiday. Having confidence in the wisdom of this purpose, I urge all patriotic societies and all good citizens to join in appropriate exercises, not only to commemorate the splendid accomplishments of the past, but to direct a better spirit of community interest in future progress, that we may secure labor and capital for development, build and maintain needed public institutions, increase the efficiency of State and local governments, improve our social conditions, and make available the wealth of opportunities our matchless climate and varied industrial conditions offer to the enterprising homeseekers of the world.

Let it be our ambition to build worthily upon the broad foundation laid by our far-seeing pioneers, and so conduct our public affairs that we may take just pride in the State, become more loyal in our citizenship and more earnest, patriotic Americans.

We believe in Colorado. Let us show our faith and patriotism by the manner in which we celebrate the natal day of our Commonwealth.

In witness whereof I have hereunto set my hand and caused the great seal of State to be affixed at Denver, this 21st day of July, A. D. 1914.

ELIAS M. AMMONS,
Governor.

Attest:

JAS. B. PEARCE,
Secretary of State.

Mrs. Edward T. Taylor recited the following poem on the Columbine, the State flower of Colorado:

THE COLUMBINE.

An idle angel, one sunny day,
Sought new means to pass the time away;
And cut a patch from heaven's blue
And looked for something else to do.

Then from a cloud he took some white
And into its center he put sunlight;
Then in the azure he placed the two,
Producing this flower—gold, white, and blue.

This was the birth of the Columbine,
And as it follows its mission divine,
Originating at heaven's gate,
Let it ever be emblem of this grand State.

—J. M. White.

At the conclusion of her recitation, and in the absence of Miss Etta Taylor, who had been designated by the Sons of Colorado for that purpose, she unveiled the memorial tablet, while the band played "The Star-Spangled Banner."

Thereupon Senator CHARLES S. THOMAS made the official presentation of the tablet to the Nation as follows:

SPEECH OF SENATOR CHARLES S. THOMAS IN PRESENTING COLORADO'S MEMORIAL TABLET TO THE NATION.

"Mr. Chairman and Coloradons: The Washington Monument is the expression in stone of an undivided national sentiment reaching back to the days of seventy-six and woven into the fabric of American institutions. It typifies the reverence of a great people for the name and their gratitude for the achievements of their most illustrious character. Like the man whose name it bears, its outlines are massive and its proportions majestic. The materials which compose its external structure are uniform and symbolize the structure of the Union. Those which crowd the recesses of its interior are contributed by the several States and represent the distinctive Commonwealths clustering beneath and supporting the shield of the great Republic. It is more than a monument to the memory of a man; it is the towering emblem of the American Government, a sisterhood of States 'distinct as the waves but one as the sea.'

"To-day we of Colorado are gathered at the shrine of Washington to present to the Nation her contribution to his memory. From her varied and exhaustless mountain stores the Centennial State has chosen a block of marble hewn from a Gargantuan quarry, squared to the shape of her own dimensions, white as the driven snow, and solid as the fame of the man to which it is now dedicated. The love which her people bear to his memory,

their loyalty to the cause he so signally vindicated, their devotion to the land whose independence he secured and of which she is now a part, their zeal for the institutions which his valor secured, all these are embodied in this offering.

"Colorado is herself a monument along the pathway of the Nation's life. Her Territorial government was forged in the fires of the Civil War and thrown upon the western frontier as a bulwark against Indian aggression. Right valiantly did she defend the outpost. She acquired her statehood in 1876, the centennial year of the Republic. Her domain was acquired from France, from Texas, and from Mexico, by treaty, by cession, and by conquest. One of her rivers marks the northernmost reach of Spanish dominion, from which it retreated before the aggressions of the Anglo-Saxon. She spreads over the roof tree of the continent, and the melting snows of her mountains feed alike the streams of the Atlantic and Pacific slopes. The walls of her southwestern canyons are crowded with the ruins of a prehistoric civilization that was old when Egypt was without her pyramids. Her mountains dwarf the pinnacles of the Alps; her vast plains have been wrested from the solitude of the desert, and yield abundant harvests to a thriving and industrious yeomanry. Her people are descendants of the pioneers. They were drawn to her borders by the lure of gold and silver, by a soil, a sky, and an atmosphere whose blended glories eclipse the sunlit climate and fertile slopes of the Riviera. They hold their heritage as a trust for posterity. They have their problems, but confront them undaunted and unafraid. They have their trials, but will emerge from them purified as by fire. They are Americans all—bone of your bone, flesh of your flesh, inspired by the same aspirations, professing the same faith, and prepared when the need shall demand it to make common sacrifice to preserve and perpetuate what Washington with his Continentals wrested from the reluctant hands of kingly power.

"Mr. Chairman, in behalf of the people of Colorado, in the name of the Centennial State, born on the hundredth anniversary of the American Union, beginning her expansive and ever-expanding career under every auspicious omen, I present to the people of the United States this tablet as a tribute of our affection, our loyalty, and our devotion to the Father of his Country."

Brig. Gen. John M. Wilson, United States Army, retired, as a member of the Washington National Monument Society, accepted the tablet on behalf of the people of the United States.

Gen. Wilson in his remarks called attention to the fact that he was present at the laying of the corner stone of the Monument on July 4, 1848, when the Hon. Robert C. Winthrop, of Massachusetts, then Speaker of the House of Representatives, delivered the formal oration; and that he was also present at the dedication of the monument on February 21, 1885, when the Hon. Robert C Winthrop prepared the oration which was read in the House of Representatives by Hon. John D. Long, of Massachusetts.

Gen. Wilson was Chief of the Corps of Engineers, United States Army, and in charge of the monument at the time of its dedication, and superintended the final work of completion. He also superintended the insertion in the walls of the Monument of the many memorial tablets that have been presented by various States, and he gave an interesting history of the construction of the Monument, and paid a beautiful tribute to the Centennial State.

The following addresses were then delivered:

ADDRESS OF SENATOR JOHN F. SHAFROTH.

"Mr. Chairman, the tablet we unveil to-day was taken from a quarry in Colorado the extent of which is not equaled anywhere in the world. The deposit is not a quarry, but consists of a series of huge mountains composed of solid white marble 99.97 pure. The industry promises to become one of the greatest of its kind on earth. That marble is now being sold all over the United States and as far as Australia and New Zealand. It has been used for the interior finish of the great 26-story municipal building in New York City and of some of the large buildings in every city in the Union. It has been used for the construction of the new post-office building in Denver, which has been pronounced the most beautiful and artistic edifice in the United States, and has been selected over many competitors as the material from which to construct the great Lincoln Memorial at the Nation's Capital. It is likely to become one of the fine sculptural marbles of the world.

"But this is only one of the resources of Colorado.

"The Geological Survey at Washington estimates that we have within the limits of our Commonwealth 371,000,000,000 tons of coal, sufficient to supply the world at the present rate of consumption for 300 years.

"The Reclamation Service has estimated that the mountain streams of Colorado, through water-power plants, are capable of generating 2,117,000 horsepower and transmitting the same to our large towns and cities for commercial uses. As there is now being manufactured from each horsepower generated in the United States products of the value, on the average, of $1,142 each year, the possibility of output from this resource in Colorado, if we utilize the power to the same advantage, will equal $2,417,641,000 a year. As the amount expended for labor in the manufacture of the products of each horsepower is, on the average, $548 a year, there is a possibility in our State of ultimately having from this resource a pay roll for wages of $1,160,116,000 a year. We are therefore destined to become one of the greatest manufacturing States in the Union.

"We have in our Commonwealth about 4,000,000 acres of irrigated lands. Egypt has about the same amount and supports therefrom 9,000,000 people. As the yield per acre is about 50 per cent more than from lands in humid climates, and as the duty of water by economic use is becoming greater each year, the possibilities of the agricultural resources of our State, when all our flood waters are conserved, can hardly be estimated.

"Colorado has produced from her mines more than $1,000,000,000 of the precious metals. We who live there know that there are many Leadvilles, Aspins, Cripple Creeks, and Creedes yet undiscovered. We further know that by cheapening processes of extraction and treatment our production from low-grade ores will be almost unlimited. Besides we have large deposits of copper, zinc, lead, pitch blend, and carnolite ores.

"Our mountains will always be the grazing lands for our cattle. With $75,000,000 now invested by our citizens in that business, our State will always rank high in that industry.

"While Colorado is destined to become great in all these lines of industry, it is sure to always attract a large population of rich and well-to-do people on account of its almost eternal sunshine and health-giving climate.

"The tourist travel yields an income to Switzerland sufficient to support most of its population of 3,000,000 people. Colorado is seven times as large as that Republic and its scenery is more magnificent and grand. More and more each year her mountains, plateaus, and canyons are becoming the playground of America.

"It is said that the birthplace of liberty is in the highlands and mountains of the world. As expressed by Drake:

"When Freedom from her mountain height
Unfurled her standard to the air,
She tore the azure robe of night
And set the stars of glory there.

"It is therefore fitting that a liberty-loving people from the crest of the continent should have a tablet in the monument dedicated to the memory of the man who sacrificed so much that his country might be free."

ADDRESS OF CONGRESSMAN H. H. SELDOMRIDGE.

"Mr. Chairman, the thoughts which come to us on this occasion are inspiring and uplifting. In this presence we open the temple of the mind and give entrance to characters and events of potent force in American history. As the years go by and yield their product of national growth and development we think more impressively of those who, under the providence of God, gave this Nation being and laid broad and deep the foundations of constitutional government.

"The strength and majesty of this beautiful shaft are but symbolic of the enduring principles of freedom, justice, and equality which underlie our civic structure. We gladly welcome every occasion which serves to remind us of these fundamentals of national faith, and we summon ourselves to renewed consecration in supporting and defending those agencies which seek to perpetuate and develop them.

"While we rejoice in this privilege of patriotic recollection we must not lose the lessons it should bring us. As we look upon this national memorial can we not in some measure put into our life and thought some portion of the spirit and self-sacrifice that controlled the life of Washington? As we think of his patriotism, his courage, his patience, and his unselfishness must we not confess that we have fallen far short of the standard that guided his life and determined his attitude toward his fellow countrymen?

"When we see on every side the striving for power and place; when we realize the strength of the forces at work to dominate and control functions of government for selfish purposes; when we hear the discordant murmurings of those who are not in sympathy with American institutions we must invoke the presence of the same patriotic spirit that found expression in Washington and other fathers of the Republic.

"We are in touch this morning with one of our great national shrines. We have come in thought and purpose to make

an offering on behalf of the people of our beloved Commonwealth. We have brought this piece of Colorado marble to place it in familiar association with similar contributions from other States, and thus share with them in actual presence the honor and power of this memorial shaft.

"We not only here establish in symbol this bond of physical unity, but behind these tablets and stones there is the more enduring bond of civil unity. There is national vitality in this thought of statehood participation in honoring the life and achievements of Washington. All share the reward of his patriotism. His honor and fame belong to the youngest as well as to the oldest Commonwealth.

"We are not adding to the strength or beauty of this monument by this contribution but we are placing our State and her people into vital fellowship with other States in this noble and patriotic enterprise. As we dedicate this Colorado stone to the place assigned to it in this structure let us pray that there may come upon our people and those of other States as well such an inrush of patriotic feeling and purpose that the spirit of Washington may live and breathe anew in all our borders.

"Colorado modestly, yet proudly, claims the honor of this occasion. As her representatives we pledge her citizenship to the observance of every national obligation and their consecration to every national endeavor."

ADDRESS OF CONGRESSMAN GEORGE J. KINDEL.

"Mr. Chairman, on this auspicious occasion, Colorado Day celebration, and the dedication of Colorado marble slab, which is the purest and finest grained on earth, and now a part of the greatest monument on earth, I am reminded of Thomas Jefferson, who said that 'agriculture, manufacture, commerce, and navigation, the four pillars of prosperity, are the most thriving when left most free to individual enterprise.'

"Without the success of the above, art, religion, science, and so forth, are of no avail.

"The matchless and inexhaustible wealth of Colorado in addition to sunshine, scenery, and health-producing atmosphere, have been matters of interest and attraction to the people of all parts of the world. Fortune seekers and fortune multipliers have found here a lucrative field for operation, until law and order was ignored, and anarchy prevailed, such as we have suffered for the past 12 months. Nowhere, and at no time, to my knowledge, has the Government restricted the development of industries as is now being done in Colorado, obviously at the behest of labor agitators, which is much deplored and criticized.

"What we pray for and are entitled to is law and order, fair transportation rates, and a square deal to all—labor and capital alike.

"Therefore, I conclude with Holland's lines, which I have repeated over a hundred thousand times:

"God give us men. The time demands
Strong minds, great hearts, true faith, and willing hands;
Men whom the lust of office does not kill;
Men whom the spoils of office can not buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie;
Men who can stand before a demagogue
And dam his treacherous flatteries without winking;
Tall men, sun-crowned, who live above the fog
In public duty and in private thinking.

"In corroboration of my statement concerning conditions in Colorado, I want to read a telegram which I received this morning, as follows:

"DENVER, COLO., *July 31, 1914.*

"Hon. GEORGE J. KINDEL,
"*House of Representatives, Washington, D. C.:*

"The restrictions of the War Department in regard to employment of labor and the fine line drawn makes it impossible for us to secure men sufficient to get on a working basis, whereby we sustain nothing but losses. Many men come into our Denver office, voluntarily seeking employment, but they lack money for transportation to the mine. They are willing that the railroad fare should be deducted from their first two weeks' pay, and will go to the mine unaccompanied. These men apply for work voluntarily and unsolicited, but according to the ruling of the officer in command of the Government troops at Trinidad, we can not take them on. If they apply to the superintendent at the mine, it is considered regular, but we can not employ labor at our headquarters in Denver and advance transportation. The fact that these men reimburse us for this advanced transportation at the end of two weeks' time, practically amounts to their paying their own fare, and as our mine is 12½ miles from Walsenburg, is it fair for a man to go that distance and voluntarily make application for work. Before he can get there he is beset by union pickets, and every influence used to turn him back. Our principal operations are in Denver, and when men voluntarily apply here, we think that we should be permitted to send them to the mine. Can you assist us in clearing up this point?

"THE SUNSHINE COAL MINING CO.,
"By W. F. OAKES, *President.*"

ADDRESS OF CONGRESSMAN EDWARD KEATING.

"Mr. Chairman, ladies, and gentlemen, I came here this morning to attend a birthday party—Colorado's birthday party. Naturally I did not anticipate that the harmony of the proceedings would be disturbed by the raven-like croakings of the calamity howler. It is unfortunate that my colleague from Colorado [Mr. KINDEL] has seen fit to refer to the domestic difficulties which have plagued our State during the last year, and it is especially unfortunate that in referring to those difficulties he has seen fit to be so intemperate in the expression of his views.

"Mr. Chairman, the gentleman would have you believe that the law is not being enforced in Colorado and that order is not being maintained. The gentleman's statement is without foundation, for, thanks to President Wilson, law and order reign within the borders of Colorado. Not a lopsided law and order, not the kind of law and order which protects one man and punishes another, but the law and order which recognizes neither race nor creed nor class, the law and order which bears as heavily on the rich man as on the poor man. In a word, Mr. Chairman, the kind of law and order guaranteed to us by the Constitution and laws of the land.

"I want to take this occasion to say that I unequivocally indorse what President Wilson has done in Colorado. He responded to what was well-nigh a unanimous appeal from our people, and the administrative officers under him have won the respect and admiration of our people by the way they have handled a most trying situation.

"It is very unfortunate when any man, especially a man in public life, loses his sense of proportion and fails to longer recognize the eternal fitness of things. When a man gets in that condition he is very apt to permit his idea, his hobby, his prejudice, to blind him to everything else that is going on in this glorious old world of ours. That is the mental condition of the gentleman from Colorado [Mr. KINDEL]. He reminds me very much of the country bumpkin who succeeded in persuading some girl to marry him and took her on a honeymoon trip to Niagara Falls. Under the direction of competent guides he was given an opportunity to view that masterpiece of nature, and when he returned to his accustomed place beside the stove in the village grocery his old cronies gathered around him and begged him to tell them something about the wonders of Niagara.

"'Tell us what impressed you most about Niagara Falls, Bill,' demanded one of his friends.

"Bill was lost in thought for several moments while he ransacked his brain to discover the one most impressive scene which he had been privileged to view during that marvelous trip. 'Well,' he said finally, 'I think the most impressive thing I saw at Niagara Falls was an Indian wearing a pair of red suspenders.'

"Now, the trouble with Bill was that he had lost his sense of proportion, and that is the trouble with the gentleman from Colorado. He does not seem to understand that it is shockingly bad taste to disturb the gayety of a birthday party with a bitter and inaccurate recital of the troubles which disturb the tranquillity of our State.

"If he will just take his eyes off the red suspenders for a moment, he will be able to appreciate what a splendid Commonwealth we have in Colorado and how proud her sons should be to claim this glorious daughter of Columbia as their very own.

"I think of Colorado as a man thinks of his mother. I was only 5 years old when she first opened her arms to receive me, a fatherless lad. She fed me, she clothed me, she sheltered me, she taught me my letters, she indulged the whims and fancies of my youth, she gave me my first job, she opened the portals of an honorable profession for me and bade me enter, and, while the responsibilities of middle age still rested lightly on my shoulders, she honored me with a commission to represent her in part in the most exalted legislative body on earth.

"Is it any wonder that I love Colorado?

"The very mention of her name makes me homesick. Van Dyke must have had Colorado in mind when, finding himself marooned in Europe, he wrote the lines:

"Oh, its home again and home again,
America for me;
I want a ship that's westward bound
To plough the rolling sea
To the blessed land of Room Enough
Beyond the ocean bars,
Where the air is full of sunshine
And the flag is full of stars."

ADJOURNMENT.

Mr. ADAMSON. Mr. Speaker, does the roll call develop a quorum?

The SPEAKER. On the roll call 205 gentlemen, not a quorum, have answered to their names. Two have come in since, and the Speaker could count himself, and that would reduce the minus quantity to 9.

Mr. ADAMSON. Mr. Speaker, I do not believe I can get the House to pass a motion to send for the absentees. It is Saturday afternoon, and I suppose the best thing I can do is to move that the House do now adjourn. I make that motion.

The motion was agreed to; accordingly (at 1 o'clock and 10 minutes p. m.) the House adjourned until Monday, August 3, 1914, at 12 o'clock noon.

EXECUTIVE COMMUNICATION.

Under clause 2 of Rule XXIV, a letter from the Acting Secretary of Labor, transmitting a report upon the Federal workman's compensation act of May 30, 1908, covering the first five complete years of its operation (H. Doc. No. 1135), was taken from the Speaker's table, referred to the Committee on the Judiciary, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. MULKEY, from the Committee on the District of Columbia, to which was referred the bill (H. R. 17309) to amend section 3 of the act of Congress approved February 28, 1898, entitled "An act in relation to taxes and tax sales in the District of Columbia," reported the same with amendment, accompanied by a report (No. 1057), which said bill and report were referred to the House Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rules XXII,

Mr. SMITH of Maryland introduced a bill (H. R. 18190) granting 30 days' annual leave to employees of the Washington Navy Yard, United States Naval Academy, and Indianhead Proving Grounds, which was referred to the Committee on Naval Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BAILEY: A bill (H. R. 18191) granting an increase of pension to Barton Spidle; to the Committee on Invalid Pensions.

By Mr. BOWDLE: A bill (H. R. 18192) granting an increase of pension to Ann E. Thomas; to the Committee on Invalid Pensions.

By Mr. FERRIS: A bill (H. R. 18193) for the relief of the heirs of Josiah Short; to the Committee on Claims.

By Mr. HARRISON (by request): A bill (H. R. 18194) for the relief of the estate of J. M. Fortinberry, deceased; to the Committee on War Claims.

By Mr. JONES: A bill (H. R. 18195) for the relief of Thomas Johnson or his legal representatives; to the Committee on Claims.

By Mr. McGILLICUDDY: A bill (H. R. 18196) granting an increase of pension to Margaret Sweeney; to the Committee on Invalid Pensions.

By Mr. SMITH of Maryland: A bill (H. R. 18197) for the relief of Arthur W. Fowler; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. DALE: Petition of D. R. K. Staatsverland, of New York State, against national prohibition; to the Committee on Rules.

Also, petition of the Stationers' Association of New York, favoring Stevens price bill; to the Committee on Interstate and Foreign Commerce.

By Mr. DANFORTH: Petition of William B. Rider, of Castile, N. Y., favoring national prohibition; to the Committee on Rules.

By Mr. EAGAN: Petition of Charles H. Van Tassell, West New York, N. J., favoring free transportation to and from duty for railway postal clerks; to the Committee on the Post Office and Post Roads.

Also, petition of International Union of Journeymen Horseshoers, protesting against national prohibition; to the Committee on Rules.

By Mr. ESCH: Petition of Manufacturers and Jobbers' Club of La Cross, Wis., protesting against national prohibition; to the Committee on Rules.

By Mr. GARDNER: Petition of People's Methodist Episcopal Church of Haverhill, Mass., favoring national prohibition; to the Committe on Rules.

By Mr. GREENE of Vermont: Petition of Mrs. Mary M. Kavanagh and other residents of the first congressional district of Vermont, urging the adoption of a national constitutional prohibition amendment ;to the Committe on Rules.

By Mr. HAYES: Petition of 500 citizens of Oxnard and 150 citizens of Piru and sundry citizens of the State of California, favoring national prohibition; to the Committee on Rules.

Also, petition of J. P. Lacerda, San Jose, Cal., protesting against national prohibition; to the Committee on Rules.

Also, petition of J. Buchler and sundry citizens of the State of California, protesting against a national health department; to the Committee on Agriculture.

Also, petition of Advent Sabbath School and Baptist Sunday School, of Palo Alto, Cal., favoring Federal censorship of moving pictures; to the Committee on Education.

By Mr. MERRITT: Petition of Mrs. Wallace McKinney, Mrs. C. B. Hobbs, Mrs. L. R. Peryn, Mrs. E. J. Goodell, Mrs. Kate Lillie, Mary R. Lillie, Mrs. May Vosburg, Mrs. J. D. Haig, Mrs. Maria Welch, Mrs. Florence Vorce, Miss Eliza Carpenter, Mrs. E. E. Hobbs, Mrs. George O'Connor, Miss Julia Dengate, Mrs. Alvira H. Cole, Mrs. C. E. Cashman, Mrs. W. H. Matthews, Mrs. Fred Honsinger, and Mrs. Julia Gurlick, all of Ellenburg Center, N. Y., favoring national prohibition; to the Committee on Rules.

By Mr. NELSON: Petitions of Charles Beining and George Kammann, of Platteville, Wis., protesting against national prohibition; to the Committee on Rules.

By Mr. RAKER: Petition of the Old Age Co., Lancaster, Pa., favoring pensions for citizens over 60 years of age; to the Committee on Pensions.

By Mr. SMITH of Maryland: Petitions of citizens of Maryland, favoring national prohibition; to the Committee on Rules.

Also, petitions of citizens of Maryland, against national prohibition; to the Committee on Rules.

SENATE.

MONDAY, *August 3, 1914.*

The Senate met at 11 o'clock a. m.

Rev. J. L. Kibler, D. D., of the city of Washington, offered the following prayer:

O Lord God of nations, we thank Thee for our blessings. We thank Thee for our domestic peace and for the encouraging status of our relations with other nations. Standing where we are, amidst the mercies of God, we are emboldened to pray for the peace of the world. Grant that there may be a tranquil adjustment of difficulties among the nations abroad. May peace and prosperity and commercial enterprise be established and maintained everywhere and may our influence and example be such as to favor righteousness to the ends of the earth. We ask it in the name of Christ the Lord. Amen.

The VICE PRESIDENT resumed the chair.

The Journal of the proceedings of the legislative day of Monday, July 27, 1914, was read and approved.

AFFAIRS IN MEXICO (S. DOC. NO. 561).

The VICE PRESIDENT. The Chair lays before the Senate a communication from the Secretary of the Navy, which will be read.

The Secretary read as follows:

THE SECRETARY OF THE NAVY,
Washington, July 28, 1914.

MY DEAR SIR: On July 20, in response to Senate resolution of July 16, I forwarded to you copy of telegram from Admiral Badger, giving the result of the investigation ordered by this department on the 9th of July with reference to the publication by Mr. Fred L. Boalt and alleging that Ensign Richardson had put into practice the law of flight. In sending you copy of that telegram I stated that as soon as the full report had been received from the board it would be forwarded. I am sending herewith a full record of the proceedings of the board of inquiry convened on board the U. S. S. *Texas* at Vera Cruz, Mexico, by order of the commander in chief, to inquire into "the truth of certain allegations made by Fred L. Boalt, correspondent for the Newspaper Enterprise Association in Vera Cruz, relative to the shooting of certain prisoners by the naval forces of the United States during the occupation of Vera Cruz on or about April 22, 1914."

Very respectfully,

JOSEPHUS DANIELS.

The VICE PRESIDENT. The communication and accompanying papers will lie on the table and be printed.

RIVER AND HARBOR IMPROVEMENTS (S. DOC. NO. 560).

The VICE PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of the 18th ultimo, a statement of the balances re-